(28,879)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 365.

HOUSTON COAL COMPANY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1922.

1 Filed September 26, 1921.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Petition.

The Houston Coal Company, plaintiff herein, at all of the times hereinafter mentioned was, and now is, a corporation created by, and duly organized and existing under the laws of the State of West Virginia, and was at such times, and is, a citizen of the United States. At all of such times said plaintiff was, and now is, engaged in the purchase and sale of coal.

First Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276) the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy on or about April 1, 1920, 2,000 gross tons of Pocahontas run-of-mine coal which was the property of this plaintiff, and as a just compensation therefore, refused to pay a greater sum than $4.00 a gross ton for said coal over the protest of this plaintiff. That thereupon the said plaintiff was commanded by the
2 Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed. The amount received by the plaintiff for said coal was $4.00 a gross ton, whereas the proper and just compensation for said coal when the same was requisitioned, was not less than $8.00 a gross ton, F. O. B. mines, and this plaintiff has lost by reason of said requisitioning the difference between said $4.00 per gross ton and $8.00 per gross ton, to-wit: $4.00 per gross ton, or a total of $8,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) in the sum of $705.33.

Wherefore, there is due and owing from the defendant to said plaintiff, the sum of $8,705.33.

(Second to Forty-fourth Causes of Action, Inclusive.)

Wherefore plaintiff prays that a copy of this petition filed herewith may be delivered to and served upon the District Attorney of the

United States for the Southern District of Ohio, Western Division; that the plaintiff recover of said defendant the total of all the foregoing sums, to-wit: the sum of $314,730.74; that the plaintiff have a judgment for the total sum of $314,730.74 and a decree upon the facts and the law; that the plaintiff recover its costs from the defendant and obtain such other and further relief as shall seem to the Court just and proper.

FREIBERG & GEOGHEGAN,
Attorneys for Plaintiff.

STATE OF OHIO,
Hamilton County, ss:

T. E. Houston being first duly sworn, says that he is President of the Houston Coal Company, plaintiff in the above entitled action; that said company is a corporation as alleged in the petition and that the affiant is authorized and does make this affidavit on behalf
3 of said corporation, and that the facts stated in the foregoing petition are true as this affiant verily believes.

(Signed) T. E. HOUSTON.

Subscribed and sworn to before me this 26th day of September, 1921.

[SEAL.] H. C. UPSON,
Notary Public, Hamilton County, Ohio.

4 In the District Court of the United States, Southern District of Ohio, Western Division.

At Law.

No. 3050.

HOUSTON COAL COMPANY, a West Virginia Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Affidavit of Plaintiff as to the Service of Copy of Petition and Mailing of Registered Letter.

STATE OF OHIO,
Hamilton County, ss:

T. E. Houston, being first duly sworn, deposes and says that he is President of the Houston Coal Company, a West Virginia corporation, the plaintiff in the above entitled action; that on the 26th day of September, 1921, plaintiff caused a copy of the petition filed herein to be served upon the District Attorney of the United States in the Southern District of Ohio, Western Division, thereof; that he is in the District wherein suit was brought, and the plaintiff mailed a copy of said petition by registered letter, of which a true copy is

hereto attached, made part hereof and marked "Exhibit A," to the Attorney General of the United States.

(Signed) T. E. HOUSTON.

Subscribed and sworn to before me this 26th day of September, 1921.

[SEAL.] H. C. UPSON,
Notary Public, Hamilton County, Ohio.

5 "EXHIBIT A."

Registered.

Cincinnati, Ohio, Sept. 26, 1921.

To the Honorable the Attorney General of the United States,
Washington, D. C.:

Enclosed you will find copy of petition in the suit of the Houston Coal Company, a West Virginia corporation, vs. The United States of America, No. 3050 at Law, filed this date in the United States District Court, for the Southern District of Ohio, Western Division.

Kindly acknowledge receipt.

Respectfully,

HOUSTON COAL COMPANY,

(Signed) By T. E. HOUSTON,
President.

6 In the District Court of the United States, Southern District of Ohio, Western Division.

At Law.

No. 3050.

HOUSTON COAL COMPANY, a Corporation under the Laws of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Affidavit of A. J. Freiberg as to Service of Copy of Petition on District Attorney of the United States, Southern District of Ohio, Western Division.

STATE OF OHIO,
Hamilton County, ss:

A. J. Freiberg, being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above entitled cause; that on the 26th day of September, 1921 he served a copy of the petition filed herein, upon the District Attorney of the United States, personally at Cincinnati, Ohio, in said district.

(Signed) A. J. FREIBERG.

Subscribed and sworn to before me this 26th day of September, 1921.

[SEAL.] HENRY M. BRUESTLE,
Notary Public, Hamilton County, Ohio.

7 Filed Jan. 13, 1922.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Motion to Dismiss.

Now comes the defendant and moves the court to dismiss the petition filed herein for the following reasons:

1. That said petition does not contain allegations showing that this court has jurisdiction.

2. That said petition does not contain allegations sufficient to constitute a cause of action against the defendant, the United States of America.

JAMES R. CLARK,
United States Attorney,
By ALLEN C. ROUDEBUSH,
Assistant United States Attorney.

8 In the District Court of the United States, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Opinion.

Filed Feb. 7/22.

PECK, *District Judge:*

On motion to dismiss for want of jurisdiction and for failure to state a cause of action.

The petition alleges forty-two causes of action, identical except as to dates, quantities and amounts, each claiming the difference between the value and the amount received by the plaintiff from the Government for coal requisitioned by the President under Section 10 of the National Defense (Lever) Act, August 10, 1917, U. S. Comp. Stat. (1919) 3115-1/8*ii*. The allegation common to all counts is that the President, by the Secretary of War, requisitioned as necessary to the maintenance of the Navy, a certain quantity of coal, "and as a just compensation therefor, refused to pay a greater sum than $4.00 a gross ton for said coal over the protest of this plaintiff;" that the coal was delivered pursuant to command of the Secretary of
9 the Navy, and that "The amount received by the plaintiff for said coal was $4.00 a gross ton, whereas the proper and just compensation for said coal when the same was requisitioned was not less than $8.00" (or some other sum larger than $4.00, varying in the different counts), with a prayer for judgment for the difference. The differences on all counts amount to $314,730.74.

It is fair to construe this pleading to mean that the President fixed $4.00 per ton as just compensation over the protest of the plaintiff; that the plaintiff delivered the coal and was then paid and received the amount so fixed by the President. The law referred to provides:

"If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessaries or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies:"

The Act contemplates and authorizes the requisitioning and taking of the supplies necessary for the support of the Army and Navy, or other public use connected with the common defense, in advance of the making of the compensation. The power and duty of ascertainment and payment of a just compensation was in the first instance with the President. The owner had his election of accepting the amount so fixed or of receiving three-fourths thereof and suing for the balance. It was not contemplated that he might receive the full amount and also preserve his controversy and bring it into this court. It was only in extinguishment of the claim that payment of the full award was authorized, and therefore it was only in
10 full satisfaction of the demand that such payment could be received. The authorization was not to pay it on account and leave open a claim against the United States, but to pay in full. By receiving payment of the full amount the claimant necessarily acceded to the condition impressed by law upon such payment, that is to say, acceded to receive it in satisfaction of the obligation. Having had his election to take all in full or three-fourths on account, and having chosen the former, he cannot claim now the privilege which he would have had had he elected the latter.

It is only when a controversy within the terms of the Act is stated that this court has jurisdiction to entertain it against the United States. The jurisdiction provided for in the Act is exclusive (United States v. Pfitsch, decided by the Supreme Court June 1, 1921), and if this court may not entertain the case by virtue of this particular Act, it may not entertain it at all. That the petition must show a case within the statutory permission to sue the United States or fail for want of jurisdiction is undoubted. Hill v. United States, 149 U. S. 593. Recent illustrations are Haupt v. United States, 254 U. S. 272; Great Western Serum Co. v. United States, 254 U. S. 240; and United States v. Nederlansch-Amerikaansche Stoomvart (Maatschappij (Holland-American Lijn), 254 U. S. 148. That permission is extended by the Act now under consideration to those to whom the award is unsatisfactory and who have been paid (or are entitled to be paid) seventy-five per centum thereof, and not to those who have accepted the entire award. The authorization is "to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation." No such case is here stated.

11 Paraphrasing the Act, the present suit may be said to be one to recover such further sum in addition to the full award of the President, receipt of which is acknowledged by plaintiff, as will make up what plaintiff contends will be just compensation. The Government has consented to be sued by those who, being dissatisfied, having accepted three-fourths of the award, but it is impossible to find assent to be sued by those who have accepted the award in full and merely desire the review of a determination of which they have had full advantage. The President's authority to fix just compensation became conclusive upon the plaintiff when it accepted the amount fixed, and no justiciable controversy was left open to be brought here under the Act. So that it is apparent that this case must be dismissed, both for want of jurisdiction and for failure to state a cause of action.

There seems to be nothing to the contrary in the cases cited by plaintiff. United States v. Pfitch, supra, was dismissed for want of jurisdiction, because jurisdiction in a case such as this was held to be the ordinary jurisdiction of the District Court, with trial by jury, which should have gone to the Circuit Court of Appeals, instead of directly to the Supreme Court by writ of error. United States v. McGrane, 270 Fed. 761, holding such claimant entitled to trial by jury, apparently comes no nearer to the present issue. That the case is one essentially of the exercise of eminent domain, as held in Filbin Corporation v. United States, 265 Fed. 354, does not help the plaintiff, for it was quite competent for Congress to vest in the President power of determining in the first instance what just compensation should be, and to provide that he who accepted that sum should be foreclosed, preserving the right of him who declined such

12 settlement and took only three-fourths thereof on account, to have his remedy over. Bauman v. Ross, 167 U. S. 548, 593, where it is said: "By the Constitution of the United States, the estimate of the just compensation for property taken for the public use,

under the right of eminent domain, is not required to be made by a jury; but may be entrusted by Congress to commissioners appointed by a court or by the executive, or to an inquest consisting of more or fewer men than an ordinary jury." Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 695.

It is urged that the constitutional right to just compensation entitles the claimant to a judicial ascertainment of the amount. Monongahela Navigation Co. v. United States, 148 U. S. 312, 327. But the plaintiff was not denied that right under Section 10 of the Act; and could have enjoyed it by accepting three-fourths of the amount fixed by the President and suing for the balance of its claim. But it waived this right when it accepted what was paid as full compensation, for the payment of the entire award could have been made on no other consideration, under the law, than as full compensation.

It is urged by the Government that the venue is not here because the plaintiff corporation is a citizen of West Virginia, and rejoined by the plaintiff that the Government has waived this point, if not by objecting to jurisdiction of the subject-matter, at any rate by moving to dismiss for failure to state a cause of action, that is to say, by demurring generally, in effect. United States v. Hvoslef, 237 U. S. 1. But this it is not necessary to determine, as the case must fail upon the major issues presented.

13 For Plaintiff: Freiberg & Geoghegan, Cincinnati, Ohio.
For Government: James R. Clark, United States Attorney, Allen C. Roudebush, Assistant United States Attorney.

14 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Entry.

Entered Feb. 21/22.

This cause coming on to be heard on the motion of the defendant for a dismissal of the petition on the ground that the court has no jurisdiction, and on the ground that the petition does not state facts sufficient to constitute a cause of action, the court being fully advised in the premises does sustain said motion on the ground that the court has no jurisdiction of the subject matter, to which the plaintiff excepts, and the court having sustained the same does grant to the plaintiff leave to file an amended petition within three days.

15 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Amended Petition.

Filed Feb. 21/22.

The Houston Coal Company, plaintiff herein, at all of the times hereinafter mentioned was, and now is, a corporation created by, and duly organized and existing under the laws of the State of West Virginia, and having an office at Cincinnati, Hamilton County, Ohio, and was at such times, and is, a citizen of the United States. At all of such times said plaintiff was, and now is, engaged in the purchase and sale of coal.

First Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917 (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 1st 1920, 2,000 gross tons of Pocahontas run-of-mine coal which was the property
16 of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $8,000.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it

might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $8,000.00, and that said sum of $8,000.00 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

17 Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $8.00 per gross ton, to-wit: $4.00 per gross ton or a total of $8,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $705.33.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $8,705.33.

Second Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 12, 1920, 2,000 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of

18 law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $8,000.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation

over and above said sum of $4.00 per gross ton, and over and above said sum of $8,000.00, and that said sum of $8,000.00 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for
19 public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.00 per gross ton and $8.00 per gross ton, to-wit: $4.00 per gross ton or a total of $8,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $689.33.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $8,689.33.

Third Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 23, 1920, 477
20 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $1,908.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above

said sum of $1,908.00, and that said sum of $1,908.00 was
21 paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $8.00 per gross ton, to-wit: $4.00 per gross ton or a total of $1,908.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $161.10.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $2,069.10.

Fourth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th, 1917, (40 Statutes at Large 276), the President of the United States,
22 acting by the Secretary of the Navy, requisitioned as necessary to the maintenace of the Navy, on or about April 27, 1920, 1,500 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $6,000.00.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $6,000.00, and that said sum of $6,000.00 was
23 paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.00 per gross ton and $8.00 per gross ton, to-wit: $4.00 per gross ton or a total of $6,000.00, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $502.00.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $6,502.00.

Fifth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about April 1, 1920, 1,064 1240/2240 gross tons of Pocahontas run-of-mine coal which was the prop-
24 erty of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $4,258.21.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $4,258.21, and that said sum of $4,258.21 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $8.00 per gross ton, to-wit: $4.00 per gross ton or a total of $4,258.22, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $354.14.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $4,612.36.

Sixth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 1, 1920, 260 500/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $1,040.89.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $1,040.89, and that said sum of $1,040.89 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been

deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.00 per gross ton and $8.00 per gross
27 ton, to-wit: $4.00 per gross ton or a total of $1,040.90, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $86.57.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $1,127.47.

Seventh Cause of Action.

Claiming to Act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 25, 1920, 59 1,440/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $238.57.

Plaintiff says that by reason of threats made against said
28 plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above the said sum of $238.57, and that said sum of $238.57 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Con-

stitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $9.00 per gross ton, to-wit: $5.00 per gross ton, or a total of $298.22, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $23.56.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $321.78.

29 Eighth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917 (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 26, 1920, 48 1,880/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $195.35.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said

30 sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $195.35, and that said sum of $195.35 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under

favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $9.00 per gross ton, to-wit: $5.00 per gross ton or a total of $244.20, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $19.25.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $263.45.

31 Ninth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about May 30th 1920, 1,040 1,900/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $4,163.39.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-

32 tiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $4,163.39, and that said sum of $4,163.39 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.00 per gross ton and $10.50 per gross ton, to-wit: $6.50 per gross ton, or a total of $6,765.52, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $528.84.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $7,294.36.

33

Tenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 5th 1920, 2,798 780/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 per gross ton, in all the sum of $11,193.39.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said

34 sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $11,193.39, and that said sum of $11,193.39 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $11.00 per gross ton,

to-wit: $7.00 per gross ton, or a total of $19,588.44, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $1,514.83.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $21,103.27.

35 Eleventh Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 8, 1920, 3,235 1,300/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $12,942.32.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-

36 tiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $12,942.32, and that said sum of $12,942.32 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between $4.00 per gross ton, and $11.00 per gross ton, to-wit: $7.00 per gross ton, or a total of $22,649.06, and the plaintiff has been further damaged by reason of said requisitioning (and in

the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $1,740.20.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $24,389.26.

37

Twelfth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 16, 1920, 41 1,960/2,240 tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $167.50.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment,

38 under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $167.50, and that said sum of $167.50 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $13.00 per gross ton, to-wit: $9.00 per gross ton, or a total of $376.88, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $28.45.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $405.33.

39 Thirteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about June 30, 1920, 36 1,960/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $147.50.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights
40 which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $147.50, and that said sum of $147.50 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $15.00 per gross ton, to-wit: $11.00 per gross ton, or a total of $405.63, and the plaintiff has been further damaged by reason of said requisitioning, (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $29.68.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $435.31.

41 Fourteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 1, 1920, 46 1,360/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $186.43.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in accepting said sum, it, the plaintiff,

42 protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above the said sum of $186.43, and that said sum of $186.43 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $16.00 per gross ton, to-wit: $12.00 per gross ton, or a total of $559.28, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $40.92.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $600.20.

43 **Fifteenth Cause of Action.**

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 7, 1920, 1,546 260/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $6,184.46.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
44 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $6,184.46, and that said sum of $6,184.46 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.00 per gross ton and $16.00 per gross ton, to-wit: $12.00 per gross ton, or a total of $18,553.40, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $1,338.94.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $19,892.34.

45 Sixteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 19, 1920, 60 100/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $240.18.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

46 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $240.18, and that said sum of $240.18 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $16.00 per gross ton, to-wit: $12.00 per gross ton, or a total of $720.53; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $50.56.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $771.09.

47 Seventeenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about July 24, 1920, 50 600/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 per gross ton, in all the sum of $201.07.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum

48 under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 a gross ton, and over and above said sum of $201.07, and that said sum of $201.07 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $16.00 per gross ton, to-wit: $12.00 per gross ton, or a total of $603.22; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $41.92.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $645.14.

49

Eighteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 5, 1920, 118 680/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $473.21.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff,

50 protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $473.21, and that said sum of $473.21 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $18.00 per gross ton, to-wit: $14.00 per gross ton, or a total of $1,656.25; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $111.52.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $1,767.77.

51 Nineteenth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 14, 1920, 3,568 380/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $14,272.68.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
52 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $14,272.68, and that said sum of $14,272.68 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.00 per gross ton and $19.00 per gross ton, to-wit: $15.00 per gross ton, or a total of $53,522.54; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $3,541.48.

Wherefore, there is due and owing from the defendant to said plaintiff, the sum of $57,064.02.

53 Twentieth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 23, 1920, 139 2,040/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $559.64.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-

54 tiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $559.64, and that said sum of $559.64 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $21.00 per gross ton, to-wit: $17.00 per gross ton, or a total of $2,378.48; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $153.81.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $2,532.29.

55 **Twenty-first Cause of Action.**

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about August 15, 1920, 100 1,400/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 per gross ton, in all the sum of $402.50.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-
53 tiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $402.50, and that said sum of $402.50 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $20.00 per gross ton, to-wit: $16.00 per gross ton, or a total of $1,610.00; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $101.70.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $1,711.70.

57 Twenty-second Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 11, 1920, 302 520/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $1,208.93.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-

58 tiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $1,208.93, and that said sum of $1,208.93 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $14.70 per gross ton, to-wit: $10.70 per gross ton, or a total of $3,233.88; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $198.34.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $3,432.22.

59 Twenty-third Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 21, 1920, 2,545 900/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $11,721.58.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, asserting that it accepted said sum under duress, and because of the threats of the officers of the
60 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $11,721.58, and that said sum of $11,721.58 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between $4.605 per gross ton and $14.70 per gross ton, to-wit: $10.095 per gross ton, or a total of $25,695.83; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $1,533.18.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $27,229.01.

61

Twenty-fourth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 1, 1920, 1,382 720/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.00 a gross ton, in all the sum of $5,529.29.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

62 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $5,529.29, and that said sum of $5,529.29 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.00 per gross ton and $16.15 per gross ton, to-wit: $12.15 per gross ton, or a total of $16,795.20; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $976.92.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $17,772.12.

63 **Twenty-fifth Cause of Action.**

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about September 1, 1920, 1,345 500/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $6,194.75.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-

64 tiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $6,194.75, and that said sum of $6,194.75 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $16.15 per gross ton, to-wit: $11.545 per gross ton, or a total of $15,530.60; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $903.36.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $16,433.96.

Twenty-sixth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about October 4, 1920, 1,810 600/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $8,336.28.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial pay-
66 ment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $8,336.28, and that said sum of $8,336.28 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $15.20 per gross ton, to-wit: $10.595 per gross ton, or a total of $19,179.79; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $1,102.84.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $20,282.63.

67 Twenty-seventh Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large, 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about October 5, 1920, 172 1,320/2,240 gross tons of Pocahontas run-of-mnie coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much les than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $794.77.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum

68 under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $794.77, and that said sum of $794.77 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers, of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $13.70 per gross ton, to-wit: $9.095 per gross ton, or a total of $1,569.70; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $90.00.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $1,659.70.

69 Twenty-eighth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about October 23, 1920, 59 40/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $271.78.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

70 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $271.78, and that said sum of $271.78 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $14.20 per gross ton, to-wit: $9.595 per gross ton, or a total of $566.27, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $30.86.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $597.13.

71 **Twenty-ninth Cause of Action.**

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, on or about October 30th 1920, requisitioned as necessary to the maintenance of the Navy, 1,781 1,160/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $8,203.89.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment,

72 under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have, to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $8,203.89, and that said sum of $8,203.89 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $13.90 per gross ton, to-wit: $9.295 per gross ton, or a total of $16,559.21; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $882.52.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $17,441.73.

Thirtieth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act f Congress, known as the Food Control Act of August 10th 1917, 40 Statutes at Large 276), the President of the United States, acting y the Secretary of the Navy, requisitioned as necessary to the main- enance of the Navy, on or about November 1, 1920, 85 400/2,240 ross tons of Pocahontas run-of-mine coal which was the property f the plaintiff, and undertook, contrary to facts and without author- ty of law, to pay as a just compensation therefor, $4.605 per ton, hich sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that he compensation so determined by him for the President was not atisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $392.25.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
74 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $392.25, and that said sum of $392.25 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and with- out due process of law within the meaning of the United States Con- stitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between $4.605 per gross ton, and $12.20 per gross ton, to-wit: $7.595 per gross ton, or a total of $646.93; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in pay- ment of the proper sums due, the sum of $34.40.

Wherefore, there is due and owing from the defendant to said plaintiff, the sum of $681.33.

75 Thirty-first Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about November 5, 1920, 2,490 1,700/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $11,469.94.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
76 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $11,469.94, and that said sum of $11,469.94 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $12.20 per gross ton, to-wit: $7.595 per gross ton, or a total of $18,917.32; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $993.16.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $19,910.48.

77

Thirty-second Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about November 1, 1920, 1,505 300/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $6,931.14.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy,

78 as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $6,931.14, and that said sum of $6,931.14 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $10.60 per gross ton, to-wit: $5.995 per gross ton, or a total of $9,023.28; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done, and by delay in payment of the proper sums due, the sum of $434.62.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $9,457.90.

79 **Thirty-third Cause of Action.**

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about November 1, 1920, 50 2,200/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $234.77.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
80 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $234.77, and that said sum of $234.77 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $10.60 per gross ton, to-wit: $5.995 per gross ton, or a total of $305.64; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $14.72.

Whereupon, there is due and owing from the defendant to said plaintiff the sum of $320.36.

81 Thirty-fourth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 8, 1920, 239 640/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $1,101.91.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

82 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount tof what was just compensation over and above the said sum of $4.605 per gross ton, and over and above the said sum of $1,101.91, and that said sum of $1,101.91 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $7.20 per gross ton, to-wit: $2.595 per gross ton, or a total of $620.95; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $29.08.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $650.03.

83 Thirty-fifth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 29th 1920, 2,407 1,220/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff, for said coal, the sum of $4.605 per gross ton, in all the sum of $11,086.74.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the *of the* threats of the officers
84 of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $11,086.74, and that said sum of $11,086.74 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $5.20 per gross ton, to-wit: $.595 per gross ton, or a total of $1,432.49; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $62.07.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $1,494.56.

85 Thirty-sixth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 31, 1920, 1,581 1,660/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $7,283.92.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment,

86 under protest however, plaintiff asserting it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $7,283.92, and that said sum of $7,283.92 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $6.30 per gross ton, to-wit: $1.695 per gross ton, or a total of $2,681.05, and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $115.73.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $2,796.78.

87 **Thirty-seventh Cause of Action.**

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about December 31, 1920, 793 180/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $3,652.14.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-
88 tiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $3,652.14, and that said sum of $3,652.14 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $6.30 per gross ton, to-wit: $1.695 per gross ton, or a total of $1,344.27; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $58.02.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $1,402.29.

89

Thirty-eighth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 29, 1921, 2,732 120/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $12,581.11.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-

90 tiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $12,581.11, and that said sum of $12,581.11 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $4.70 per gross ton, to-wit: $.095 per gross ton, or a total of $259.54; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $9.95.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $269.49.

91 Thirty-ninth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 26, 1921, 2,723 680/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $12,540.81.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the
92 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $12,540.81, and that said sum of $12,540.81 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between $4.605 per gross ton and $4.70 per gross ton, to-wit: $.095 per gross ton, or a total of $258.72; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $10.05.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $268.77.

93

Fortieth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 1, 1921, 2,918 180/2,240 gross tons of Pocahontas run-of-mine coal, which was the property of the plaintiff and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $13,437.76.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy,

94 as aforesaid, and that in so accepting said sum, it the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $13,437.76, and that said sum of $13,437.76 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $4.95 per gross ton, to-wit: $.345 per gross ton or a total of $1,006.74; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sume due, the sum of $38.42.

Wherefore, there is due and owing from the defendant to said plaintiff the sum of $1,045.16.

95 **Forty-first Cause of Action.**

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about January 1, 1921, 404 1,940/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $1,864.41.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights

96 which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $1,864.41, and that said sum of $1,864.41 was paid to the plaintiffs, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $4.95 per gross ton, to-wit: $.345 per gross ton, or a total of $139.68; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $5.33.

Wherefore, there is due and owing from the defendant to the said plaintiff the sum of $145.01.

97 Forty-second Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about February 12, 1921, 3,013 280/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $13,875.44.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy,

98 as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above the said sum of $13,875.44, and that the said sum of $13,875.44 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $4.70 per gross ton, to-wit: $.095 per gross ton, or a total of $286.25; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $10.35.

Wherefore, there is due and owing from the defendant to the said plaintiff the sum of $296.60.

99 Forty-third Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10th 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about February 1, 1921, 2,212 2,020/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per gross ton, which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 per gross ton, in all the sum of $10,190.41.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the

100 Navy, as aforesaid, and that in so accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $10,190.41, and that said sum of $10,190.41 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning the difference between said $4.605 per gross ton and $4.70 per gross ton, to-wit: $.095 per gross ton, or a total of $210.23; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done) and by delay in payment of the proper sums due, the sum of $6.97.

Wherefore, there is due and owing from the defendant to the plaintiff the sum of $217.20.

101 Forty-fourth Cause of Action.

Claiming to act under the alleged authority of Section 10 of an Act of Congress, known as the Food Control Act of August 10, 1917, (40 Statutes at Large 276), the President of the United States, acting by the Secretary of the Navy, requisitioned as necessary to the maintenance of the Navy, on or about February 1, 1921, 238 480/2,240 gross tons of Pocahontas run-of-mine coal which was the property of the plaintiff, and undertook, contrary to facts and without authority of law, to pay as a just compensation therefor, $4.605 per gross ton which sum was much less than the market value thereof.

Plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff.

Plaintiff says that thereupon it was commanded by the Secretary of the Navy to deliver said coal so requisitioned to the officers of the Navy, which command was obeyed.

Plaintiff says that subsequently, the said Secretary of the Navy caused to be paid to said plaintiff for said coal the sum of $4.605 a gross ton, in all the sum of $1,096.98.

Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum, it, the plain-
102 tiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.605 per gross ton, and over and above said sum of $1,096.98, and that said sum of $1,096.98 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

Plaintiff says that by and through said requisitioning for public use, and by the manner and form in which it was done, it has been deprived of its private property without just compensation and without due process of law within the meaning of the United States Constitution, and particularly the Fifth and Seventh Amendments thereof, and that it seeks this remedy to which it is entitled under favor of Article III, Section 2, of the Constitution of the United States.

Plaintiff says that it has lost by reason of said requisitioning, the difference between said $4.605 per gross ton and $4.70 per gross ton, to-wit: $.095 per gross ton, or a total of $22.63; and the plaintiff has been further damaged by reason of said requisitioning (and in the manner and form in which it was done), and by delay in payment of the proper sums due, the sum of $.75.

Wherefore, there is due and owing from the defendant to the said plaintiff, the sum of $23.38.

103 Wherefore, plaintiff prays that a copy of this amended petition filed herewith may be delivered to and served upon the District Attorney of the United States for the Southern District of Ohio, Western Division; that the plaintiff recover of said defendant the total of all the foregoing sums, to wit: the sum of $314,730.74; that the plaintiff have a judgment for the total sum of $314,730.74, and a decree upon the facts and the law; that the plaintiff recover its costs from the defendant and obtain such other and further relief as shall seem to the Court just and proper.

FREIBERG AND GEOGHEGAN,

Attorneys for Plaintiff.

STATE OF OHIO,
County of Hamilton, ss:

T. E. Houston being first duly sworn, says that he is President of the Houston Coal Company, plaintiff in the above entitled action; that said company is a corporation as alleged in the Amended Petition and that the affiant is authorized and does make this affidavit on behalf of said corporation, and that the facts stated in the foregoing Amended Petition are true as this affiant verily believes.

T. E. HOUSTON.

Subscribed and sworn to before me this 20th day of February, 1922.

[SEAL.] H. C. UPSON,
Notary Public, Hamilton Co., O.

My Commission expires June 4, 1923.

104 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Motion to Dismiss Amended Petition.

Filed Feb. 23, 1922.

Now comes the defendant and moves the court to dismiss the amended petition filed herein, for the following reasons:

1. That said amended petition does not contain allegations showing that this Court has jurisdiction.

2. That said amended petition does not contain allegations sufficient to constitute a cause of action against the defendant, the United States of America.

JAMES R. CLARK,
United States Attorney,
By ALLEN C. ROUDEBUSH,
Assistant United States Attorney.

105 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Entry Ordering Amendment of Amended Petition.

Entered Feb. 27, 1922.

This cause having come on for argument on the motion of the plaintiff to dismiss the amended petition, the court hereby grants leave to plaintiff to amend the amended petition by inserting in each cause of action after the fifth paragraph of said causes of action, a paragraph setting forth what facts the plaintiff claims constituted the duress under which it claims to have accepted the sums fixed by the President as set forth in each of the several causes of action, and it is further ordered that the motion stand as against the amended petition so amended.

106 Filed Feby. 27, 1922.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Amendment to Amended Petition.

Plaintiff says that said threats were to the effect that a certain document must be signed by the plaintiff electing either to accept the price so fixed by the President in full of its claim or to express a

willingness to receive 75% of said amount and sue the United States for the difference between said 75% and what would make up just compensation; that when the plaintiff protested against signing said document, it was informed by said officers that said document was an order and not a contract and must be obeyed, and that if it was not obeyed, certain payments then due or to become due to said plaintiff would not be paid, and that its coal and its mines, and those under its control, would be confiscated and taken over by and through said officers acting for the United States, although there was no claim by said officers that the President had, or would find it necessary to secure an adequate supply of necessaries for the support of the Army, or the maintenance of the Navy, or for any other public use connected with the common defense to take over its mines or confiscate its coal, and although there was in fact and to the full knowledge of the President and of said officers an abundant supply or source of supply for all of said purposes at just and reasonable prices, and although the plaintiff had failed or neglected in no wise to conform to the prices or regulations fixed or made by the President, or to conduct its business efficiently, or to do any of the things required
107 by it to be done under Section 25 of the foregoing act of Congress, or any section thereof.

Plaintiff further says that the same threats were made by the same officers touching the acceptance by said plaintiff of said price so fixed by the President as just compensation, and under the same circumstances as aforesaid, and that said orders were obeyed and said price was accepted by the plaintiff in fear of said threats, and in the belief that but for compliance with said orders and said fixing of prices, it would be barred from receiving the money then due or owing to it from the United States, or about to become due, and it would have its coal confiscated, and would be deprived of the control of the mines and other properties belonging to it or under its supervision and control, greatly to its loss and detriment.

FREIBERG & GEOGHEGAN,
Attorneys for Plaintiff.

STATE OF OHIO,
County of Hamilton, ss:

T. E. Houston being first duly sworn, says that he is President of the Houston Coal Company, plaintiff in the above entitled action; that said company is a corporation as alleged in the Amended petition, and that the affiant is authorized and does make this affidavit on behalf of said corporation, and that the facts stated in the foregoing Amendment to the Amended petition are true as he verily believes.

T. E. HOUSTON.

Subscribed and sworn to before me this 24th day of February, 1922.

[SEAL.] H. C. UPSON,
Notary Public, Hamilton County, Ohio.

108 In the District Court of the United States, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

Opinion.

Filed March 31, 1922.

PECK, *District Judge:*

On motion to dismiss *to dismiss* the amended petition as amended.

It has been heretofore held with regard to the original petition that unless the case stated falls within the permission to sue granted by the tenth section of the National Defense Act, there is no jurisdiction against the United States, and further, that such statutory permission does not extend to one who has received in full the amount awarded by the President as just compensation under that Act.

In avoidance of this situation plaintiff now alleges, by amendments, that its receipt of the award was not in effect an actual acceptance because its settlement with the Government was executed under duress. It is alleged that plaintiff was compelled to elect in writing over its signature whether it would accept the award in full or seventy-five per cent thereof and sue for the balance of just compensation; that it was forced thereto by threats of the "Secretary of the Navy through officers of the Navy thereunto authorized" that unless it signed, money then due it for coal would be withheld and that its coal and mines would be confiscated, although the President had not declared the necessity for so doing and although no such necessity in fact existed; and that the same threats were repeated touching the receipt of the money.

109 The election which plaintiff says it was compelled to make by threats was the election necessary to be made under the statute. The alleged threats put upon the plaintiff no greater hardship that did the law. Plaintiff does not aver that in the making of its choice it was influenced by threats one way or the other, but only that it was forced to choose. For anything shown by the petition, the plaintiff's election to accept the award in full, rather than seventy-five per cent and obtain the right to sue, was uncontrolled, free and voluntary. And this is emphasized by the fact that the plaintiff does not state that it has ever rescinded that election or tendered back to the Government the additional twenty-five per cent. Contracts made under duress are not void, but voidable. They are valid until rescinded. Rescission must be within a reseasonable time after the duress is removed, and must be accompanied by a return of that

which was acquired under the enforced contract. 9 R. C. L., Duress, page 725.

Plaintiff claims that it is not required to tender the excess over and above seventy-five per cent under the familiar rule that one need not tender back that to which the other admits he is entitled. But under the Act of the President's award determines the compensation only for purposes of settlement. The award, if accepted, binds both parties; if rejected, it binds neither. If the claimant is not willing to accept it, and sues for more, he must risk getting less, and so in the interim is given but seventy-five per cent of the award in hand. Therefore, it cannot be said that it is admitted as a matter of law that plaintiff, had it elected the partial settlement, would never the less have been entitled in any event to the full award; hence the necessity of rescinding and tendering back the twenty-five per cent, in order to undo such a settlement if made under duress.

Furthermore, the threats relied upon do not constitute duress. It is not averred that there was duress of person or of property.

110 The threatened withholding of payment is not duress. Silliman vs. United States, 101 U. S. 465. The threatened confiscation and taking over of the mines were steps that the President had a right to take under the twelfth section of the Act, giving right, of course, to just compensation. It is not alleged that there was no finding of necessity for so doing if the claimant and others refused to supply fuel. The allegation is that "there was no claim by said officers" that the President had found or would find such necessity. The threats are alleged to have been made by the Secretary of the Navy through those acting under him. The President speaks by the heads of his departments, and the Secretary of War must be presumed to have been acting by direction of the President. Porter vs. Coble, 246 Fed. 244, 249. Furthermore, in carrying out the purposes of the National Defense Act the President was, by Section 2, authorized to utilize any department or agency of the Government. It was, therefore, for the President to say whether and when necessity existed, speaking in this instance through the Secretary of the Navy, and his determination of that question was final. Threats of resort to processes or expedients authorized by law certainly put no one in duress. The authorities go even further.

In Silliman vs. United States, supra, the Quartermaster's Department of the Army demanded that claimants execute new charter-parties containing stipulations essentially different from those by which they had previously chartered barges to the Government and which were still in force, as to compensation, and announced its purpose to retain possession of the barges and withhold all compensation unless and until the claimants executed the same. They signed the new agreement, protesting that it was executed against their wishes and under the pressure of financial necessity, and thereafter sued for the compensation originally stipulated. It was held that the facts stated were insufficient to prove duress.

111 It is concluded that in as much as there is no sufficient averment of duress controlling plaintiff's election to receive the award in full, or of rescission with an offer to restore the former

status, that the election to receive, and receipt of, the amount of the award constituted settlement in full.

It is argued that the interpretation herein adopted of the tenth section of the Lever Act results in the taking of property without due process of law, and that due process is no different in time of war than in time of peace.

While the war created no new powers, it undoubtedly required the exercise of powers latent in time of peace. McKinley vs. United States, 249 U. S. 397. Public danger warrants the substitution of executive process for judical process. Moyer vs. Peabody, 212 United States 78. Fu-thermore, the plaintiff had its opportunity to avail itself of judical process, but elected not to do so.

Plaintiff's petition states no case permitted by law to be brought against the United States and therefore must be dismissed for want of jurisdiction.

For Plaintiff: Freiberg & Geoghegan, Cincinnati, Ohio.
For Defendant: James R. Clark, United States Attorney.

112 Entered April 10, 1922.

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Operating under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Entry.

This cause coming on to be heard on the motion of the defendant for a dismissal of the amended petition as amended by leave of court hereinbefore given, the court being fully advised in the premises, does sustain said motion on the ground that the court has no jurisdiction of the subject matter, and the plaintiff failing to plead further, it is ordered, adjudged and decreed that the defendant, the United States of America is hence dismissed with its costs to all of which the plaintiff excepts.

113 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Petition for Writ of Error.

(Filed April 10th, 1922.)

Now comes the above named plaintiff, Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia, by its attorney, and says that this cause was commenced in the District Court of the United States for the Southern District of Ohio, Western Division, on the 26th day of September 1921.

That thereafter, and on the 13th day of January 1922, the defendant interposed a motion to dismiss the cause; that thereupon, and on the 21st day of February 1922, the court sustained the motion and gave the plaintiff leave to file an amended petition; that on the 21st day of February 1922, the said plaintiff filed in this court, and in due time, its said amended petition; that thereupon, to-wit: on the 23d day of February 1922, the defendant renewed its motion to dismiss the cause; that thereupon, on the 27th day of February 1922, the court, pending final argument, made an order giving to the plaintiff leave to file an amendment to the amended petition which was accordingly filed on the 27th day of February 1922

That thereafter, and on the 10th day of April 1922, and
114 after argument duly had, this court granted the motion to dismiss and did dismiss the plaintiff's petition for lack of jurisdiction of the subject matter.

That in this cause the jurisdiction of the court was and is in issue, and the question decided by this court was the question of the jurisdiction of the court. That this court, in and by said order and judgment, determined and decided in favor of the defendant against the plaintiff that the court had no jurisdiction of the subject matter.

That the plaintiff is aggrieved by said decisions sustaining the motions of the defendant and entering judgment in favor of defendant and against the plaintiff.

Plaintiff further says that in said orders and judgments of the court dismissing the petition, and the amended petition as amended, filed herein, for lack of jurisdiction of the subject matter, errors were committed to the prejudice and great damage of the plaintiff, all of which will in more detail appear in the record of this cause and

from the Assignment of Errors which is presented and filed with this petition.

Plaintiff further says that there was involved in said petition and said amended petition as amended more than the sum of Five Thousand dollars, exclusive of interest and costs.

Wherefore, the plaintiff considering itself aggrieved, prays that a Writ of Error may be allowed and may issue in its behalf to the Supreme Court of the United States, upon the question of the jurisdiction of the court, hereby determined, and that the errors so complained of may be corrected and that a complete transcript of the record, proceedings and papers in this cause duly authenticated may be sent to said Supreme Court of the United States.

Dated at Cincinnati, Ohio, this 10th day of April, 1922.

A. JULIUS FREIBERG,
FREIBERG & GEOGHEGAN,
Attys. for Plaintiff.

The foregoing petition for Writ of Error was duly presented to me this 10th day of April, 1922, before the allowance of the writ
115 of error to the Supreme Court of the United States in said cause.

PECK,
United States District Judge for the Southern District of Ohio.

116 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Assignment of Errors.

(Filed April 10th, 1922.)

Now comes the above named plaintiff, Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia, by its counsel, and in connection with its petition for a Writ of Error to the Supreme Court of the United States, assigns error in the record and proceedings in the above entitled cause, as follows:

1. That the said court erred in sustaining defendant's motion to dismiss the plaintiff's petition and plaintiff's amended petition as amended herein filed.

2. That said court erred in rendering judgment against the plaintiff in said cause and that the said judgment is contrary to law and the facts as stated in the pleadings in said cause.

3. That the said court erred in deciding that it had no jurisdiction of the subject matter set forth in the petition and in the amended petition as amended and in dismissing said cause for that reason.

117 Wherefore, the said plaintiff prays that the judgment of said court be reversed, and that such directions be given to the United States District Court to the end that the plaintiff have in said cause such damages and relief at the hands of the defendant to which under the law of the United States the plaintiff may be found to be entitled.

Dated at Cincinnati, Ohio, this 10th day of April, 1922.

A. JULIUS FREIBERG,

FREIBERG & GEOGHEGAN,
Attorneys for Plaintiff.

The foregoing Assignment of Errors was duly presented to me this 10th day of April, 1922, before the allowance of the Writ of Error to the Supreme Court of the United States in this cause.

PECK,
United States District Judge for the Southern District of Ohio.

118 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Allowance of Writ of Error.

(Filed April 10th, 1922.)

This day came Houston Coal Company, a corporation under the laws of the State of West Virginia, and presented a petition for allowance of a Writ of Error and Assignment of Errors accompanying the same, which petition upon consideration of the court is hereby allowed upon the filing of a bond in the sum of $500 with good and sufficient security to be approved by this court.

J. W. PECK,
United States District Judge for the Southern District of Ohio.

119 *Certificate.*

(Filed April 10th, 1922.)

United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

An order and judgment having been entered herein on April 10th 1922, granting the motion of the defendant to dismiss the amended petition of the plaintiff as amended, and dismissing the defendant from said cause for lack of jurisdiction of the subject matter, now, therefore, this court, in pursuance of the second paragraph of the Fifth Section of the Act of Congress, approved March 3, 1891, hereby certifies to the Supreme Court of the United States that in the above entitled cause the jurisdiction of this court of the subject matter of the action was in issue, and was decided adversely to the plaintiff, and that by reason thereof, and not otherwise, the judgment of dismissal of April 10th 1922, shown in the record herein was entered; that pursuant to said Act above mentioned, the following question is hereby certified to the Supreme Court of the United States:

Whether upon the pleadings and particularly the amended
120 petition as amended filed by the plaintiff in said cause, this court acquired jurisdiction of the subject matter of the action.

Dated at Cincinnati, Ohio, this 10th day of April, 1922.

JOHN W. PECK,
United States District Judge for the Southern District of Ohio.

121 *Bond.*

(Filed April 10th, 1922.)

Know all men by these presents: That we, Houston Coal Company, a corporation under the laws of the State of West Virginia, as principal, and The Aetna Casualty and Surety Company, as surety, are held and firmly bound unto the above named The United States of America, in the sum of Five Hundred Dollars ($500.00) to be paid to the said The United States of America for the payment of which well and truly to be made, we do bind ourselves and each of our successors and assigns jointly and severally firm by these presents.

Sealed with our seals and dated the 10th day of April, 1922.

Whereas, the above named Houston Coal Company, has prosecuted a Writ of Error to the United States Supreme Court to reverse the

order and judgment dismissing the amended petition as amended of the said Houston Coal Company heretofore filed in the United States District Court for the Southern District of Ohio, Western Division, said judgment of dismissal being dated the 10th day of April, 1922, rendered in the above entitled suit in court,

Now, therefore, the consideration of this agreement is such that if the above named Houston Coal Company, a corporation, shall prosecute its Writ of Error to reverse and set aside said judgment of dismissal, and answer all damages and costs, if it fail to make its plea good, then this agreement shall be void, otherwise the same shall be and remain in full force and effect.

[SEAL.] HOUSTON COAL CO.,
By T. E. HOUSTON,
President.

THE ÆTNA CASUALTY AND SURETY COMPANY, [SEAL.]
By JOHN P. RYAN,
Attorney in Fact.

Approved by
J. W. PECK,
District Judge for the United States District Court for the Southern District of Ohio.

April 10th, 1922.

122 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation Organized and Existing under the Laws of the State of West Virginia, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Stipulation for Transcript.

(Filed April 13, 1922.)

It is hereby stipulated by and between the plaintiff, Houston Coal Company, by its attorneys, and the defendant, the United States of America, by its attorney, the United States Attorney for the Southern District of Ohio, that a transcript of the record of the above entitled matter in error to the Supreme Court of the United States shall consist of the following:

1. That part of the original petition consisting of the introductory paragraph and the first cause of action; also (omitting that part of the petition beginning with the second cause of action and ending with the forty-fourth cause of action, both inclusive, it being agreed that the causes of action so omitted are identical with the first cause

of action, except with reference to the amounts of coal alleged to have been requisitioned when taken from the plaintiff by the officers of the Navy, the dates when taken and the alleged values of the coal so taken), the prayer for judgment for the total sum of Three Hundred and Fourteen Thousand, Seven Hundred and Thirty and 74/100 dollars ($314,730.74).

123 2. The motion of the defendant to dismiss the original petition.

3. The opinion of Judge Peck on the decision of said motion.

4. The order of the court sustaining said motion and giving plaintiff leave to file an amended petition.

5. The amended petition.

6. The motion to dismiss the amended petition.

7. The order authorizing the filing of an amendment to the amended petition and ordering the motion to dismiss to stand as to said amended petition as amended.

8. The amendment to the amended petition.

9. The opinion of Judge Peck on the motion to dismiss the amended petition as amended.

10. The judgment entry dismissing the amended petition as amended, for lack of jurisdiction.

11. Petition for Writ of Error to the Supreme Court.

12. Assignment of Errors.

13. Order allowing the Writ of Error.

14. Certificate.

15. Bond.

16. Writ of Error.

17. Citation with return.

18. Stipulation as to contents of the record.

It is further stipulated and agreed that the printing of the captions, jurats, the affidavits of service, together with a copy of a letter notifying the Attorney General of the United States of the filing of the suit may be dispensed with.

A. JULIUS FREIBERG,
FREIBERG & GEOGHEGAN,
Attorneys for Houston Coal Company.
THOS. H. MORROW,
United States Attorney for the Southern District of Ohio, Representing the Defendant, The United States of America.

124 United States District Court, Southern District of Ohio, Western Division.

No. 3050.

HOUSTON COAL COMPANY, a Corporation, etc., Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant.

THE UNITED STATES OF AMERICA,
Southern District of Ohio,
Western Division, ss:

I, B. E. Dilley, Clerk of the District Court of the United States within and for the District and Division aforesaid, do hereby certify that the foregoing typewritten pages, numbered from 1 to 123, inclusive, to be a full, true, and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the City of Cincinnati, Ohio, this 17th day of April, A. D. 1922.

[Seal of the United States District Court, Southern Dis. of Ohio.]

B. E. DILLEY,
Clerk,
By HARRY F. RABE,
Deputy.

125 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a Writ of Error, filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia is plaintiff-in-error and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as is in the said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 10th day of April, in the year of our Lord one thousand nine hundred and twenty-two.

J. W. PECK,
Judge U. S. District Court,
Southern District of Ohio.

April 10, 1922.

Service of the above citation is hereby acknowledged for defendant The United States of America.

THOS. H. MORROW,
U. S. Attorney, S. D. O.

[Endorsed:] No. 3050. U. S. District Court, Southern District of Ohio. Houston Coal Company, plff., vs. The United States of America, deft. Citation. Filed at — o'clock — M., Apr. 10, 1922. B. E. Dilley, Clerk.

126 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States, for the Southern District of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Houston Coal Company, a corporation organized and existing under the laws of the State of West Virginia, plaintiff in error and The United States of America defendant in error a manifest error hath happened, to the great damage of the said Houston Coal Company, plaintiff-in-error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of the United States District Court, Southern Dis. of Ohio.]

B. E. DILLEY,
Clerk of the District Court of the United States,
Southern District of Ohio,
By HARRY F. RABE,
Deputy.

Allowed by
J. W. PECK,
U. S. District Judge,
Southern District of Ohio.

Apr. 10, 1922.

[Endorsed:] No. 3050. U. S. District Court, Southern District of Ohio. Houston Coal Company, plff., vs. The United States of America, deft. Writ of Error. Filed at — o'clock — M., Apr. 10, 1922. B. E. Dilley, Clerk.

Endorsed on cover: File No. 28,879. S. Ohio D. C. U. S. Term No. 365. Houston Coal Company, plaintiff in error, vs. The United States of America. Filed April 24th, 1922. File No. 28,879.

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TABLE OF CASES CITED

Supreme Court of the United States

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BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This cause comes to this court by direct writ of error to the District Court of the United States for the Southern District of Ohio, Western Division, on assignments of error raising the question of the jurisdiction of the court, and on the certificate of the District Judge certifying to this court the sole question as to whether the court below had jurisdiction of the subject matter of the action. (R.-61.)

Section 238, Judicial Code.

Houston Coal Company, a West Virginia corporation, filed a petition consisting of forty-four causes of action, each one of which, however, is identical with the other so far as the questions herein raised are concerned.

The action was brought under Section 10 of an Act

of Congress known as the "Food Control Act" of August 10, 1917, commonly known as the Lever Act.

So far as that section is pertinent here, it reads as follows:

> "Sec. 10. That the President is authorized, from time to time, to requisition foods, feeds, fuels and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities, for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessaries or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies."

The petition of the plaintiff (R. 1) alleged in substance that the President, acting by the Secretary of the Navy, undertook, on various dates, to requisition sundry tons of coal, the property of the plaintiff, and contrary to fact, and without authority of law, to pay as a just compensation therefor, $4.00 per ton, which sum was much less than the market value thereof.

The petition goes on to state that the plaintiff duly notified the Secretary of the Navy that the said compensation was not satisfactory to the plaintiff, but that thereupon the plaintiff was commanded by the Secre-

tary of the Navy to deliver the coal and that the command was obeyed; and it further alleges that the Secretary of the Navy caused to be paid to the plaintiff for the coal, the sum of $4.00 per gross ton.

A further allegation was to the effect that by reason of the threats made against the plaintiff by the Secretary of the Navy, through his officers, the sum was accepted by way of partial payment, under protest, however, the plaintiff asserting that it accepted said sums under duress, and because of the threats of the officers of the Navy, and that in so accepting said sum, it (the plaintiff), protested to the Secretary of the Navy and reserved all rights which it might have, to compel the full payment of what was just compensation, over and above said sum of $4.00 per gross ton, and that said sum of $4.00 per gross ton was paid to the plaintiff with full knowledge on the part of said officers of said protest.

Plaintiff charged that by this manner of requisitioning, it was deprived of its property without just compensation, and without due process of law, within the meaning of the fifth and seventh amendments of the United States Constitution. Plaintiff then laid its damages at the difference between $4.00 per gross ton, the amount paid, and $8.00 per gross ton, the market value, amounting to the total sum of Three Hundred and Fourteen Thousand, Seven Hundred and thirty and seventy-four one hundredths dollars ($314,730.74) and claimed this amount as due from the United States.

The Government then moved to dismiss the petition (R. 4) on two grounds: First, for failure to state a cause of action, and second, for the reason that the court had no jurisdiction of the subject matter. The District

Court sustained the motion on the ground that it had no jurisdition of the subject matter. On an amended petition (R. 8) filed by leave (R. 7), the court took the same action.

The court construed Section 10 of the Lever Act to mean that the jurisdiction of the court hinged on the condition precedent that the claimant must have been paid 75 per cent. and no more, of the amount determined by the President to be just compensation. (R., 5.)

It concluded that the mere receipt by the plaintiff of the amount fixed by the President in full, barred the plaintiff from bringing its action, notwithstanding the circumstances as to protest, etc., alleged by the plaintiff, and notwithstanding allegations in the petition as to the express notice from the plaintiff to the Navy that the price was not satisfactory and that the plaintiff company reserved all its rights.

Counsel called the court's attention to the fact that the acceptance of the sum was not voluntary, and, therefore, not an agreed extinguishment of plaintiff's claim. Whereupon the court permitted an amendment to the petition (R. 53), setting forth more specifically the nature of the threats alleged to have been made by the officers of the United States. The amendment to the petition thereupon alleged that the officers of the Navy stated that the plaintiff would be compelled to sign a certain document, either announcing its willingness to receive the amount so fixed by the President in full, or receive 75 per cent. of that amount, and sue the United States for the difference; that when the plaintiff protested against signing said document, it was informed that the document was an order and not a contract, and must be obeyed, and if not obeyed, certain payments then due to the

plaintiff would not be paid, and that all of its coal and its mines would be confiscated, although there was no right under the circumstances in the said officers, or in the President to confiscate the coal of said mines.

Plaintiff added that the same threats were made in respect to the acceptance by the plaintiff of the price fixed by the President as just compensation, and claimed therefore that although it had received more than seventy five per cent. of the Navy's fixed price, it had never consented thereby to extinguish its claim.

Upon a further hearing, the District Court again dismissed the petition as amended (R. 57), for the reason that it had no jurisdiction of the subject matter. The court (R. 55) reiterated the reasons it gave in the earlier opinion, that is, that the plaintiff was not in a position to sue under the statute because it had accepted more than 75 per cent of the compensation fixed by the President. In addition, it refused to entertain the allegations of duress set forth in the amendment, first, because the threatened withholding of payments and moneys otherwise due, is not duress; secondly, that the threat of confiscation was entirely within the right of the President under the Lever Act.

The court held the view, that, in any event, before the plaintiff could bring its suit he must tender back the difference between 75 per cent. of what the President fixed as just compensation and the amount it received, and that the plaintiff having not alleged such tender, the court lacked jurisdiction to entertain the action.

The assignments of error are as follows: (R. 59).

ASSIGNMENT OF ERRORS.

1. That the court erred in sustaining the defendant's motion to dismiss the plaintiff's petition and plaintiff's amended petition as amended herein filed.

2. That said court erred in rendering judgment against the plaintiff in said cause and that the said judgment is contrary to law and the facts as stated in the pleadings in said cause.

3. That said court erred in deciding that it had no jurisdiction of the subject matter set forth in the petition and in the amended petition as amended and in dismissing said cause for that reason.

ARGUMENT.

THE RIGHT TO SUE IN THE DISTRICT COURT IS NOT PREDICATED ON THE PAYMENT OF SEVENTY-FIVE PER CENTUM OF THE PRESIDENT'S ALLOWANCE.

The passage of Section 10 of the Lever Act was no doubt in deference to the fifth amendment of the Constitution, to the effect that private property shall not be taken for public use without just compensation and that no person shall be deprived of his property without due process of law.

Suits against the United States had already been authorized by Congress in the Court of Claims and in the District Courts of the United States where the amount involved does not exceed ten thousand dollars. Sec. 145 Judicial Code, and Sec. 24, paragraph 20, Judicial Code.

In both these cases, however, a right of trial by jury

is expressly denied. One of the purposes of Section 10 of the Lever Act, if not the chief purpose, was to accord to one whose property had been taken, the right of trial by jury.

U. S. v. *Pfitsch,* 256 U. S., 547.

It is extremely likely that a trial by jury is required cases of this kind by the Constitution of the United States.

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * *."
> Art. 7, U. S. Constitution.

That a suit in condemnation of property is a suit at common law was established in *Kohl* v. *U. S.*, 91 U. S., 367; *Beatty* v. *U. S.*, 203 Fed., 625; *Filbin Corporation* v. *U. S.*, 265 Fed., 354, but whether a trial by jury is, or is not, required by the constitution, it is evident that the whole scheme of Section 10 of the Lever Act was predicated on giving to the District Court exclusive jurisdiction and upon the preservation in that court, in a proper suit, of the right of trial by jury. In other words, Section 10 is in all respects a statute providing for condemnation proceedings by the Government where certain property of the individual was required for war purposes, with all safeguards and constitutional limitations applicable to that kind of a suit. The inference is, therefore, that Congress did not intend in this statute to shear away by conditions the basic and constitutional right of the citizen if his property had to be taken for war purposes, to have his compensation therefor determined in the orthodox way.

Filbin Corporation v. *U. S.*, cited above.

Moreover, plaintiff contends that a construction of Section 10 which would make the citizen's right to sue conditional upon the payment of seventy-five per centum, and no more, of the amount allowed by the President would not be permissable under the fifth and seventh amendments above referred to.

Monongahela Navigation Co. v. *U. S.*, 148 U. S., 312.

In that case, the statute provided in a condemnation proceeding that the court should exclude from consideration certain franchise values of the property to be taken. Mr. Justice Brewer at page 327:

> "The Legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public taking the property through Congress or the Legislature its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The constitution has declared that just compensation shall be paid and ascertainment of that is a judicial inquiry * * *."

> "The right of the legislature of the state by law, to apply the property of the citizen to public use, to determine what is the just compensation it ought to pay therefor or how much benefit it has conferred upon the citizen by thus taking his property without his consent or to extinguish any part of such compensation by prospective conjectural advantage, or in any manner to interfere with the just powers and province of courts and juries, in administering right and

justice, cannot for a moment be admitted or tolerated under our constitution."

Isom v. *Miss,* 36 Miss., 300.

We do not contend that because the 75 per cent clause is in Section 10, that section is thereby rendered unconstitutional. What we contend is that such a construction of the statute should not be given to it so as to render it unconstitutional.

A careful scrutiny of Section 10 will disclose that the 75 per cent clause was inserted for the benefit of the citizen.

Our contention is that it gave permission to the Government authorities to pay 75 per cent of the President's allowance, if the whole is unsatisfactory to the citizen, so that he should not be kept out of all of his money pending further judicial inquiry.

"The provision that he (the President) should determine in the first instance so as to pay 75 per cent of the amount determined by him was a provision in favor of the owner of the property so as not to keep him out of all compensation pending the litigation to which he is entitled by the constitution to determine what was just compensation."

Filbin Corporation v. *U. S.*, 265 Fed. (above cited) at page 357.

The statute reads:

"If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid 75 per cent. of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five

> per centum, will make up such amount as will be just compensation * * * * ."

Prior to this language there is the express injunction upon the President that "he shall ascertain and pay a just compensation therefor."

As between the President, therefore, and the aggrieved person, the President has the right to pay, and the aggrieved person has the right to receive a just compensation independently of the seventy-five per cent clause. There is therefore no room for the consideration entertained by the court below, (R. 5) that the aggrieved person had no right to receive what the President determined as just compensation, unless he gave up his right of action against the United States.

At first blush it might seem to have been an unwise thing for the aggrieved person to receive 100 per cent of the President's allowance and still seek to maintain his right of action when he could have clearly maintained that right of action without cavil by receiving only seventy-five per cent.

But there were a good many reasons why the Houston Coal Company took this step, as will appear further along.

It will be noted that the connection between the seventy-five per cent clause and the clause giving jurisdiction is not such as to make the latter conditional upon the former.

Indeed, the phraseology is in substance:

> "The claimant shall be paid seventy-five per cent of the amount determined by the President and shall be entitled to sue the United States to recover a further sum so as to make up just compensation."

So much for the right to sue. But, as we have pointed out above, the claimant always had the right to a judicial inquiry as to his just compensation under favor of the fifth amendment, and especially under the sections of the Judicial Code above cited.

Following then upon the right to sue comes the clause giving jurisdiction in the following language:

> "And jurisdiction is hereby conferred upon the United States and District Courts to hear and determine all such controversies."

Our contention is that every controversy connected with the situation, including the present controversy as to whether the receipt of the President's allowance in full is an extinguishment of the claim, is part and parcel of the jurisdiction conferred.

Suppose the Government had refused to pay the 75 per cent but was willing to pay only 70 per cent or 50 per cent, could it be said that this act on the part of the Government debarred the claimant from prosecuting his suit at all? Or suppose the Government, by inadvertence or for any cause, had paid the claimant 76 per cent or 80 per cent, could it be said that this act of the Government debarred the plaintiff from its suit?

In a case in the Court of Appeals of the Third Circuit, the record disclosed that the fact was that the claimant had not received anything from the Government. Yet the court held that the action lay in the District Court.

> "Indeed to our mind, the purpose and sole purpose of Congress in this section simply was to grant the claimant the right to sue the United States and to then vest jurisdiction in the District Court to hear and determine the allowed suit * * * * Which method did Congress have

> in view when it enacted 'jurisdiction is hereby conferred upon the United States District Courts to hear and determine all such controversies'? Certain it is the jurisdiction was not committed to a judge or to the court sitting as a Judge. It was committed to the District Courts *without limitation*, and common practice and common sense alike suggest that Congress had nothing else in view than a jury trial."
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> *U. S.* v. *McGrone*, 270 Fed. Rep., 761.

We contend on this phase of the subject that the seventy-five per cent. clause was not a jurisdictional clause but was simply by way of permission given to the Government to pay seventy-five per cent pending the judicial inquiry, and that the jurisdictional clause followed further along.

THE QUESTION OF EXTINGUISHMENT OF THE CLAIM BY ACCEPTANCE OF ONE HUNDRED PER CENT OF THE PRESIDENT'S PRICE IS A MATTER OF PROOF AND IS NOT A JURISDICTIONAL FACT.

The petition of the plaintiff alleges that when the price was fixed at $4.00 a ton, less than the market value, it was done "over the protest of this plaintiff." (R. 1).

The amended petition alleged that the plaintiff duly notified the Secretary of the Navy that the compensation so determined by him for the President *was not satisfactory* to the plaintiff (R., 8), and that it accepted the sum by way of partial payment, under protest, and in fear of threats made against said plaintiff.

> "A requisition, like a taking by eminent domain, is not a taking under agreement. Acquiescence on the part of a loyal citizen to the tak-

> ing of his property by the sovereign is not the equivalent of the making of a contract, or the entering into of an agreement in the legal sense of that term, for the obtaining of the property in question. A requisition is a one-sided exercise of authority, which depends either upon force or the acquiescence and loyalty of the owner of the property requisitioned, in order to accomplish the taking whether protest is entered or not, the obligation to repay is the same."
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> *Benedict* v. *U. S.*, 271 Fed., at p. 719.

Reverting once more to Section 10, we find that the petition alleges what the Act calls for, that is, that the compensation *was not satisfactory* and that it so notified the President's subordinates, and when it took the amount allowed by the President it did so by way of partial payment only, and that the money was paid to the claimant with full knowledge of this notification. (R. 9).

An analysis of Section 10 shows that no particular way is provided in which the property owner must express his dissatisfaction with the price fixed by the President; in fact, he is not required to express this at all or to notify the Government whether or not such price is satisfactory to him. On the contrary, it seems that the act places upon the Government the duty of ascertaining whether or not such price is satisfactory to the property owner. If it is not satisfactory, then the provision is that the Government shall pay him 75 per cent of the compensation determined by the President.

Note that this is a command placed upon the Government and not an injunction or restriction against the property-owner forbidding him to receive more than seventy five per cent. The point is that the government

must determine what payment to make to the property-owner under the language of the section. The owner has the right to receive whatever the government may tender, although less than the just compensation to which he believes he is entitled. If the compensation fixed by the President is not satisfactory to him, and if in any reasonable way he has brought this fact to the attention of the government before any payment is tendered him by it, either by reservation of his legal rights or in any other manner fairly and reasonably susceptible of conveying to the government the conclusion on the part of the owner that such price is not satisfactory to him, and especially where he has reserved his legal rights to have the question of just compensation judicially determined, then we submit it is clear that the burden of determining the amount of the payment to be made to the property owner rests upon the Government.

If in spite of notice or knowledge that the compensation fixed by the President is not satisfactory to it, the Government either for the purpose of trying to foreclose the property-owner from thereafter contesting such compensation, or for any other purpose disregards the injunction contained in Section 10 and tenders the property-owner not 75 per cent. but 100 per cent. of the compensation which the President has fixed, then the consequences of this act must rest upon the actor, that is to say, upon the Government who tenders the payment. And this is especially true where the owner, in the most vigorous language protests against the price which has been fixed as inadequate and unfair, as in this case.

But it is argued that since the plaintiff is proceeding under Section 10, and Section 10 gives the District Court jurisdiction only of the difference between seventy-five

per cent of the commission fixed by the President and just compensation to be determined by the court, the District Court has no jurisdiction of an action for the difference between one hundred per cent of the President's price and such just compensation.

The considerations pointed out above answer this: The Section looked forward to the probability that in most cases the Government would pay the property owner only seventy five per cent of the President's price and therefore gave him the right to sue for the difference between such seventy five per cent, and just compensation; that is to say, for the difference between the amount paid him and just compensation. However, if the Government elects to pay him one hundred per cent of the President's price instead of seventy five per cent, the plain intendment and spirit of the Section is, that his right to sue for the difference between the payment made him and just compensation still remains and cannot be defeated by the act of the Government in paying him more than seventy five per cent. The whole includes all its parts. Note that the District Court is given jurisdiction "to hear and determine *all such controversies,*" referring to controversies arising under Section 10. If it has jurisdiction of an action involving the difference between three-fourths of the price fixed by the Government and just compensation, it should have jurisdiction of an action involving a smaller amount; namely, the difference between the whole price fixed by the President and just compensation upon the principle that the express award of a greater power includes a lesser one. Manifestly, the spirit of the Act is that if the attempt by the Executive to exercise judicial functions contrary to the constitutional right of the property owner is not

satisfactory to him, he is given expressly the right to have the District Court determine the amount of just compensation to which he is entitled. *The real object of the statute is to authorize suit against the Government to ascertain what will be just compensation to the owner of the property taken.*

This is the bottom controversy arising under Section 10. Provision is made for certain payments to be made by the Government, which must be credited upon the amount of just compensation to which the property owner is entitled and he is given the express right to sue for the difference.

It can make no difference so far as the principle involved is concerned whether these partial payments or seventy five per cent of the President's price or any sum less than the whole are the just compensation to which the property owner is entitled. He must, of course, give the Government credit on account for all such payments. The Government then gives him the right to submit to the District Court for a trial by jury the ascertainment of the amount of compensation to which he is entitled, after crediting the Government with such payments that he has received.

Authorities elsewhere cited show that if either the President or Congress has attempted to usurp the functions of the courts by attempting to fix conclusively the amount of compensation to which the owner was entitled, such an effort would have been void because repugnant to the constitution; that a judicial proceeding to ascertain the amount of compensation to which an owner is entitled for his property which has been requisitioned or condemned is not a suit against the United States brought by the owner for which express authority must

be given by some act of Congress, but in reality merely a second or later step in a proceeding which has already been commenced by the United States against the property owner by its taking his property, which step is merely the assertion of a right given him by the Fifth Amendment to require the United States as a condition to the taking of his property to pay him just compensation for it.

Filbin Corporation v. *U. S.* (above cited).

We are concerned here only with the question of jurisdiction. Whether or not the plaintiff by accepting 100 per cent has, by this act extinguished its claim is a question of fact to be passed on by the court and jury. Taking the averments of the petition as true, as we understand they must be taken at this stage of the case, we submit is manifest that the plaintiff did not accept the price fixed by the Government for its coal as satisfactory. The petition states the contrary. (R. 8).

If the Lever Act had never been passed, and this suit were in the Court of Claims, surely the question of the receipt of 100 per cent of the amount that the Executive had decided to be in his opinion fair would not prevent jurisdiction. It is true that there were there no other facts but the bare acceptance of the same, the evidence and proof might justify non-suit.

We submit therefore that the court below, in its first opinion when it says in substance that the consent of the Government to be sued at all depends upon the dissatisfied person having accepted three-fourths of the award and no more, was clearly in error. (R. 6).

We conclude on this phase of the case that the effect of the acceptance of the sum of 100 per cent of the

President's allowance by the plaintiff below was purely a question of proof, to be passed on by the court and jury.

EVEN IF ON ITS FACE THE RECEIPT OF MORE THAN SEVENTY-FIVE PER CENT. IS AN EXTINGUISHMENT OF THE CLAIM, THE ALLEGATIONS OF DURESS NEGATIVE THAT RESULT.

We have argued that the seventy-five per cent. clause has of itself, nothing to do with the jurisdiction of the court, and we have contended that so long as the petition stated that before the receipt of the money and at the time of the receipt of the money the Government was duly notified that the price was not satisfactory, and that the plaintiff, if paid the money, would retain all of its rights, the co-incident receipt of the President's price would not of itself bar the jurisdiction to entertain the suit. The petition, however, also alleged that the acceptance of 100 per cent. of the President's price when tendered by the government was made by the plaintiff under duress. (R., 8.)

In deference to the court's opinion that unless the statements as to duress were amplified in specific detail, he would rule that there had been an extinguishment of the claim, the plaintiff filed, with leave, (R. 53) an amendment to the amended petition setting forth specifically the nature of the duress.

The allegations as to duress (record page 53) were to the effect that both in signing the document and in accepting the money the plaintiffs were influenced to do so by threats on the part of the Navy officers that other money due, or to become due to the plaintiff, would not be paid and that all its coal and its mines would be confiscated by the government.

The acts of the Navy officers were what is known as "moral duress" by the government. This court has held on a number of occasions that acts done or money paid under that kind of duress did not bind the actor or the recipient.

> "An importer had put into his invoice the price actually paid for goods, with charges, and proposed to enter them at the values thus fixed. The collector concluded that the value would be ascertained as of the time of shipment in New York which was considerably higher. The importer protested but in order to avoid the penalty which was threatened, he did make an addition to his invoice so as to escape that penalty. In an action to recover back the excess duties the court held: 'this addition and its consequent payment of the higher duties were so far from voluntary in him that he accompanied them with remonstrances against being thus coerced to do the act in order to escape a greater evil and accompanied the payment with a protest against the legality of the course pursued towards him.' * * *
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> "Now it can hardly be meant in this class of cases, that, to make a payment involuntary, it should be done by actual violence or any physical duress. It suffices, if the payment is caused on the one part by an illegal demand, and made on the other part reluctantly and in consequence of that illegality, and without being able to regain possession of his property except by submitting to the payment."
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> *Maxwell* v. *Griswold*, 10 Howard, 243.

"Where the United States instituted an action for the recovery of money on a bond given with sureties, by a purser of the Navy and the

defendants, in substance, pleaded that the bond was variant from that prescribed by law, and was under color of office, extorted from the obligor contrary to the statute, by the then Secretary of the Navy, as the condition of the purser's remaining in office and receiving its emoluments, and the United States demurred to this plea, it was held that the plea constituted a good bar to the action."

U. S. v. *Tingey,* 5 Peters, 115.

"Where the Internal Revenue Bureau requires a commission (on the sale of stamps) to be received in stamps instead of money and refused to modify its decision, receipts and settlements made in pursuance of that requirement and necessity, were not voluntary in such sense as to preclude the claimant from subsequently insisting on his statutory rights and recovering such commissions. * * *

"The parties were not on equal terms. The appellant had no choice. The only alternative was to submit to an illegal exaction, or discontinue its business. It was in the power of the officers of the law and could only do as they required."

Swift v. *U. S.,* 111 U. S., 22.

"The payment of money to an official to avoid an onerous penalty, though the imposition of that penalty might have been illegal, was sufficient to make the payment an involuntary one."

Robertson v. *Frank,* 132 U. S., 17.

"When such duress is exerted under circumstances sufficient to influence the apprehensions and conduct of a prudent business man, payment of money wrongfully induced thereby

> ought not to be regarded as voluntary. When the duress has been exerted by one clothed with official authority or exercising a public employment, less evidence of compulsion or pressure is required."
>
> Case above cited.

In respect to the allegations in the amendment to the petition touching the threats of withholding payments due to the plaintiff in case it did not accept the sums tendered by the Government in full payment, the District Court below cited (R., 56) the case of *Silliman* v. *United States,* 101 U. S., 465, to the effect that the threatened withholding of payments due does not come under the category of moral duress by the government for the reason that the aggrieved party always had the right to sue the United States for the money withheld.

We contend, however, that although the mere threat of withholding payments already due may not in themselves constitute duress, standing alone, nevertheless where such threats are one of a number of threats calculated to force the coal operator to sign an agreement relinquishing his rights, there the situation is very different.

In the Swift case cited above, 111 U. S., 22, it appeared that while it was true that the claimant in purchasing new stamps would have had to continue to make the same agreements, he always had the right to bring suit against the United States just as the plaintiff had in the Silliman case, for under payment on any particular item; that is to say, he could have continued in business by paying the government's exactions and suing for his damages without giving up the right to sue on the earlier transaction; yet the court allowed recovery on all

the transactions and allowed the principle of duress touching the agreements of settlements, notwithstanding the claimant always had the right to sue on the breach of the earlier agreements.

The threat to take, over all of the plaintiff's coal and all of its mines if carried into effect, would of course have put the plaintiff out of business.

The court below seemed to think that the threatened confiscation of the mines of the plaintiff were within the right of the officers of the Navy (R., 56).

The amendment to the petition clearly alleges (R., 54) that the threat to confiscate the coal and the mines was not legal. It is true the Lever act, under certain conditions, justified the President in taking over the coal and the mines.

> "That whenever the President shall find it necessary to secure an adequate supply of necessaries for the support of the army or the maintenance of the Navy or for any other public use connected with the common defense, he is authorized to requisition and take over for use or operation by the Government any factory * * * mines or other plant. * * *"
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> Act of August 10, 1917, Section 12.

It must be remembered that the right of the President to take over the mines under Section 12 of the Lever Act is limited to occasions.

> "Whenever and wherever in his judgment it is necessary for the official prosecution of the war."

The right to confiscate mines was not given to the President and in turn to army and navy officers for the

purpose of extorting private property from individuals at a price 50 per cent. lower than the market value of the articles.

The threat made by the navy officers as alleged in the petition, if carried into effect, would have been by way of requiring this particular coal company to part with its property at a price below the market, and therefore unfair, and not to satisfy any public emergency connected with the war.

The first section of the Lever Act passed August 10, 1917, provided that

> "By reason of the existence of the state of war it is essential to the national security and defense, for the successful prosecution of the war and for the support and maintenance of the army and navy to secure an adequate supply, etc., * * * that *for such purposes* the instrumentality, means methods, powers, authorities, duties, obligations and prohibitions hereinafter set forth are created."

Pursuant to this provision during the war the President made many orders in reference to coal. After the Armistice on November 11, 1918, and by January 31, 1919, the various orders had been gradually modified or suspended.

Toward the end of 1919 the Fuel Administration no longer existed. High prices for all materials were ruling and the war emergency was over. American troops had been demobilized and when on October 27, the President vetoed the Volstead Act, he specifically stated that the war emergency had ended; that the armies had been demobilized and that he could see no reason for continuing in effect this war-time measure.

When Congress confers upon the President the power to inquire and decide whether a necessity existed in time of war, it is true that the scope of this power is not limited to activities in the field, and dispersion of the enemy. We are not unmindful of the case of *Stewart* v. *Kahn*, 11 Wallace, 493, and other cases to this effect. But the question is not what powers Congress could have granted but what powers has it granted in this respect. Congress surely did not intend that the words "necessary for the essential prosecution of the war" should comprehend the seizure of coal mines after April 1, 1920, for the purpose of forcing the mine owner to sell his coal to the Government at less than the market price. Whether a state of war technically existed or not at this time, there was no *prosecution of the war* to which any such confiscatory order could contribute efficiency. We do not believe that the courts would permit arbitrary powers conferred upon the executive in war-time to extend beyond the period reasonably calling for their use. Otherwise under the doctrine of *Stewart* v. *Kahn* above cited, there would never be an end of the hectoring of private property owners by government officials.

We think therefore that the threats set forth in the petition as amended were not threats to do something that the government had the right to do.

Plaintiff's petition clearly alleges that the circumstances set forth in the act justifying such seizure were not present; that is, that the President had, or would find it necessary, in order to secure an adequate supply of necesaries, or for any other public use connected with the common defense, to take over the mines or confiscate the coal, and that there was, to the full knowledge of the President, and of said officers, an abundant supply, or

sources of supply, for all of said purposes at just and reasonable prices.

Plaintiff further alleges (R., 54) that it had not in any respect failed to conform to the prices and regulations fixed or made by the President, or to conduct its business efficiently, or to do any of the things required by it to be done under Section 25 of the Lever Act. Inasmuch as it was only by virtue of Section 25 that the threatened act could be carried into effect, and inasmuch as the statements of fact in the petition must, in this proceeding, be taken to be true, we have a situation where government officers were threatening to do an illegal act, the result of which caused the plaintiff to accept the price tendered by the President's subordinates.

In the case at bar, at all events, the Navy Officers had no right to take the coal or to take the mines of the plaintiff. They could only have taken the coal, or the mines under the provisions of Sections 12 and 25 of the Lever Act, and the amended petition as we have seen alleges that none of the provisions of these sections were present. They certainly had no right to bludgeon the coal operator into furnishing coal at a price far below the market price, simply because the Navy officers had the physical power to make them agree to that price, there being no public emergency requiring the seizure of the coal or the seizure of the mines.

While we do not insist that the acceptance *of the money* by the Houston Coal Company was compelled by the duress of the Navy officers, what we do contend is that the acquittance of the United States and the agreement to extinguish the claim against the United States which the court below (R., 5) deduces from the facts stated in

the petition and from Section 10, even if the court's deduction is correct, are void and of no effect.

The suggestion made by the government below that in time of war, acts of government officers are not to be taken as strongly against the government as in time of peace are sufficiently disposed of we think by the following cases:

Ex parte Mulligan, 4 Wall., 2.
Hamilton v. *Kentucky Distilleries Co.*, 251 U. S., 146.
Cohen Grocery Co. v. *U. S.*, 255 U. S., 81.

We conclude that the 75% clause, if indeed it is a condition precedent to the jurisdiction of the lower court, has no bearing, in the face of the allegations of plaintiff's petition on the subject of duress.

THE PLAINTIFF WAS NOT BOUND TO TENDER BACK TWENTY-FIVE PER CENT. OF THE MONEY RECEIVED.

The court below seemed to think (Record, 55-56) that at all events before the plaintiff could take advantage of the jurisdiction of the court, he must tender back 25% of the President's price so as to leave the necessary 75%, which as he thought, constituted the necessary ingredient of jurisdiction.

Where a contract or an act is voidable for certain reasons, it is sometimes held that money received under favor of such a contract or act must be tendered before the plaintiff can proceed to his further remedy. But where the delay makes the contract or the act void, there surely can be no liability to return money received by way of partial payment.

The Government in this case, as is alleged in the peti-

tion (R., 8, 9), paid to the plaintiff $4.00 per ton which the Government officers claimed was just compensation under Section 10 of the Lever Act. If at least $4.00 a ton was admitted by the Government to be just compensation, then there can be no ground for the return of the money.

It is quite true that if upon trial the jury should assess a less sum than $4.00 a ton, plaintiff would have to return to the United States the difference between $4.00 and the amount held to be correct payment.

> "Where a person is induced by threats of groundless prosecution to accept a less sum than is justly owing to him on a policy of fire insurance, in satisfaction of his claim, and to surrender the same, he may maintain an action on the policy for the balance due, without returning or tendering back the money so received."
>
> *Ins. Co.* v. *Hull,* 51 O. S., page 270.

See, also,

> *Leslie* v. *Keepers,* 68 Wis., 123, and
> *Fist* v. *Fist,* 3 Colo. Appeals, 273.

On this general subject we have to say that even if the Government might be said to have the right by way of answer to compel the plaintiff to return to the court, or tender to it the 25%, we submit that it is stretching matters pretty far to make such a tender the basis of the jurisdiction of the court as to the subject-matter at the very outset.

The doctrine of tender may affect the rights of the parties as between themselves, to be fought out at the trial, but surely it can have no bearing on the question of the jurisdiction of the court.

CONCLUSION.

1. The 75% clause in Section 10 of the Lever Act does not enter into the question of the jurisdiction of the court.

2. The question of extinguishment of the claim by the plaintiff's having accepted 100% of the price fixed by the President is a matter of proof and not a jurisdictional fact.

3. Though the acceptance of 100% of the President's price might constitute an extinguishment of the claim under ordinary circumstances, under the acts in the case at bar specifically set forth in the petition, the duress exercised by the government officers took away from the acceptance of that money any and all consequences upon which an extinguishment of the claim might be said to be based.

4. Plaintiff was not bound to tender back any part of the money voluntarily paid by the Government.

It is true, the plaintiff is bound to credit the government with the amount it has been paid, but the retention of the money pending the trial of the case can have no possible bearing on the jurisdiction of the court.

Respectfully submitted,

A. JULIUS FREIBERG,

Attorney for the Plaintiff in Error.

In the Supreme Court of the United States

OCTOBER TERM, 1922.

HOUSTON COAL COMPANY, PLAINTIFF IN error,
v.
THE UNITED STATES OF AMERICA. } No. 365.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This writ of error brings up for review a judgment of the District Court for the Southern District of Ohio dismissing a petition brought by the plaintiff in error, upon the ground that that court had no jurisdiction to entertain the action. The district judge made a certificate, pursuant to Section 238 of the Judicial Code, that the jurisdiction of the court of the subject-matter of the action was in issue, and was decided adversely to the plaintiff, and that by reason thereof, and not otherwise, the judgment of dismissal was entered; and certified the following question:

"Whether upon the pleadings and particularly the amended petition as amended filed by the plaintiff

in said cause, this court acquired jurisdiction of the subject-matter of the action." (P. 61.)

The specific question is whether the District Court has jurisdiction to entertain an action against the United States, under Section 10 of the Lever Act (40 Stat. 276), to recover just compensation for property requisitioned, after the property owner has accepted the full amount determined by the President to be just compensation for his property.

Section 10 of the Lever Act, so far as it is pertinent, is as follows:

> That the President is authorized, from time to time, to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amounts as will be just compensation for such necessaries or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies. * * *

The petition seeks to recover the sum of $314,730.74, alleged to be the difference between the

amount received by the plaintiff from the Government for coal requisitioned under the Lever Act and what is claimed would have been just compensation therefor. The original petition alleged 42 causes of action, identical except as to dates, quantities, and amounts, each claiming the difference between $4 per ton and an amount greater than that, alleged to be the proper and just compensation. The allegation common to all counts was that the President, by the Secretary of the Navy, requisitioned, as necessary to the maintenance of the Navy, a certain quantity of coal, "and as a just compensation therefor, refused to pay a greater sum than $4 a gross ton for said coal over the protest of this plaintiff"; that the coal was delivered pursuant to command of the Secretary of the Navy, and that "the amount received by the plaintiff for said coal was $4.00 a gross ton, whereas the proper and just compensation for said coal when the same was requisitioned was not less than $8.00" (or some other sum larger than $4, varying in the different counts). (P. 1.)

A motion to dismiss the bill was made and was granted, Judge Peck writing an opinion, which appears on pages 4 to 7 of the record.

In construing the pleading the court said:

> It is fair to construe this pleading to mean that the President fixed $4.00 per ton as just compensation over the protest of the plaintiff; that the plaintiff delivered the coal and was then paid and received the amount so fixed by the President.

This construction of the pleading seems to have been acquiesced in, and the case proceeded upon that basis. After the motion was granted and the petition dismissed, an amended petition was filed pursuant to leave granted. In this amended petition the plaintiff attempted to introduce into the case some new elements by the following allegation (p. 8):

> Plaintiff says that by reason of threats made against said plaintiff by the Secretary of the Navy through officers of the Navy thereunto authorized, the said sum was accepted by way of partial payment, under protest, however, plaintiff asserting that it accepted said sum under duress, and because of the threats of the officers of the Navy, as aforesaid, and that in so accepting said sum it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum of $4.00 per gross ton, and over and above said sum of $8,000.00, and that said sum of $8,000.00 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest.

After this pleading was filed the court made an order (p. 53) allowing the plaintiff to amend the amended petition by inserting in each cause of action a paragraph setting forth facts which the plaintiff claimed constituted the duress under which it claims to have accepted the sums fixed by the President.

The amendment thus filed (pp. 53 and 54) was as follows:

> Plaintiff says that said threats were to the effect that a certain document must be signed by the plaintiff electing either to accept the price so fixed by the President in full of its claim or to express a willingness to receive 75% of said amount and sue the United States for the difference between said 75% and what would make up just compensation; that when the plaintiff protested against signing said document, it was informed by said officers that said document was an order and not a contract and must be obeyed, and that if it was not obeyed, certain payments then due or to become due to said plaintiff would not be paid, and that its coal and its mines, and those under its control, would be confiscated and taken over by and through said officers acting for the United States, although there was no claim by said officers that the President had, or would find it necessary to secure an adequate supply of necessaries for the support of the Army, or the maintenance of the Navy, or for any other public use connected with the common defense to take over its mines or confiscate its coal, and although there was in fact and to the full knowledge of the President and of said officers an abundant supply or source of supply for all of said purposes at just and reasonable prices, and although the plaintiff had failed or neglected in no wise to conform to the prices or regulations fixed or made by the President, or to conduct its business efficiently,

or to do any of the things required by it to be done under Section 25 of the foregoing act of Congress, or any section thereof.

Plaintiff further says that the same threats were made by the same officers touching the acceptance by said plaintiff of said price so fixed by the President as just compensation, and under the same circumstances as aforesaid, and that said orders were obeyed and said price was accepted by the plaintiff in fear of said threats, and in the belief that but for compliance with said orders and said fixing of prices, it would be barred from receiving the money then due or owing to it from the United States, or about to become due and it would have its coal confiscated, and would be deprived of the control of the mines and other properties belonging to it or under its supervision and control, greatly to its loss and detriment.

Judge Peck thereupon dismissed the amended petition as amended, holding that the facts constituting the alleged duress were insufficient to take the case out of the principles laid down in his opinion dismissing the original petition.

ARGUMENT.

THE JURISDICTION CONFERRED UPON THE DISTRICT COURTS BY SECTION 10 OF THE LEVER ACT DOES NOT EXTEND TO SUITS BROUGHT TO RECOVER ADDITIONAL COMPENSATION AFTER THE PROPERTY OWNER HAS ELECTED TO RECEIVE, AND HAS RECEIVED, THE AMOUNT DETERMINED BY THE PRESIDENT TO BE JUST COMPENSATION, NOR TO SUITS TO AVOID AN ACCORD AND SATISFACTION UPON THE GROUND THAT IT WAS OBTAINED BY DURESS.

The situation in which the plaintiff now finds itself is the result of its attempt to serve its own interest in deliberate disregard of a plain Act of Congress. If it has not received just compensation for its coal and has lost its right thereto, it is not the fault of the United States, for Congress made ample provision for ascertaining and paying, including the right of trial by jury in local courts, deemed by many a valuable right to claimants, and one not generally provided in suits against the United States.

Section 10 of the Lever Act provided two methods of payment. First, the President was directed to ascertain the just compensation and pay it. Second, if the owner of the property taken elected not to accept the President's award he was to be paid 75 per cent thereof and could sue for such additional amount as would make the compensation just, and jurisdiction was conferred upon the District Courts to hear and determine that issue.

The Government claims that such were the only issues which the District Courts were empowered to entertain.

(a) The alleged causes of action set forth in its petition as variously amended are not such as are cognizable in the District Courts.

The sole question here is whether the plaintiff has alleged a cause of action of which the District Court has jurisdiction under Section 10 of the Lever Act. That question has been certified by the District Judge under Section 238 of the Judicial Code.

The District Courts have no general jurisdiction of suits against the United States other than that conferred by Section 24 of the Judicial Code, pursuant to which they sit as Courts of Claims, without a jury, in cases involving claims not exceeding $10,000. Statutes extending the right to sue the Government and conferring jurisdiction upon the courts for that purpose will, as a general rule, be strictly construed (*Blackfeather* v. *United States*, 378 U. S. 376), and the jurisdiction can not be enlarged by implication (*Price* v. *United States*, 174 U. S. 373, 375). As regards all courts of the United States, inferior to the Supreme Court, two things are necessary to create jurisdiction:

> The Constitution must have given to the court the capacity to take it, and an Act of Congress must have supplied it. Their concurrence is necessary to vest it. *The Mayor, etc., of Nashville* v. *Cooper*, 6 Wall. 247, 252.

It is only when a controversy within the terms of the Lever Act is stated that the District Court has jurisdiction to entertain it against the United States. If that court might not entertain the case by virtue

of that particular Act, it might not entertain it at all. That the petition must show a case within the statutory permission to sue the United States or fail for want of jurisdiction is undoubted. *Hill* v. *United States*, 149 U. S. 593; *Haupt* v. *United States*, 254 U. S. 272; *Great Western Serum Company* v. *United States*, 254 U. S. 240; *United States* v. *Nederlansch-Amerikaansche Stoomvart*, 254 U. S. 148.

In the case of *United States* v. *Pfitsch*, 256 U. S. 547, this court examined the nature of the jurisdiction conferred by Section 10 of the Lever Act upon the Districts Courts, for the purpose of deciding whether review of decisions of those Courts, in cases brought under that section, was by direct writ of error from the Supreme Court or from the Circuit Courts of Appeals, and reached the conclusion from the legislative history of the Act, and by comparison with other acts, that Congress deliberately conferred jurisdiction upon the Distr ct Courts, for the purpose of allowing trial by jury. The court said:

> It is difficult to conceive of any rational ground for rejecting the clear and explicit amendment made by the Senate except to accord trial by jury.

The court pointed out that, where the jurisdiction of the District Court was concurrent with that of the Court of Claims where the amount involved did not exceed $10,000, all suits brought and tried should be tried by the court without a jury.

It would seem to be clear that, from the lauguage of Section 10 of the Lever Act, the only issue which

Congress contemplated would arise under the Act was that of just compensation, and it was willing, indeed, it insisted, that the property owner have the right of trial by jury as to that issue. It is plain that where compliance was made with the terms of that Act such would be the only issue to submit to the jury; but the plaintiff, unwilling to comply with the terms of that Act, and in an endeavor to circumvent the Act and at the same time make out a cause of action against the United States, has insisted in interjecting into its alleged cause of action issues which are clearly beyond the contemplation of Congress and which Congress has never shown a willingness to submit generally and without reservation to the District Courts.

An examination of the plaintiff's petition, as finally perfected by amendment, indicates great reluctance to set forth the facts in a plain, simple manner, but the only conclusion which can be drawn, which was drawn by the District Court and is apparently conceded by the appellant, is that the President requisitioned coal belonging to the plaintiff, and, pursuant to the Lever Act, fixed a price to be paid as just compensation; that the plaintiff was unwilling to accept that price, and was also unwilling to make an election under the Act either to accept it in full or to accept 75 per cent of it and retain its right to sue for the balance. It is alleged that the naval officers required him to elect, and the duress, which he alleges, was in requiring him to make the election. He thereupon, apparently,

elected to take the full amount, but at the same time attempted to reserve the same right which he would have had had he elected not to take the full amount. Apparently he signed some paper, which he has not set forth, but which he describes as an election "either to accept the price so fixed by the President in full of its claim or to express a willingness to receive 75 per cent of said amount and sue the United States for the difference between the said amount and what would make up just compensation." Receiving money tendered as full compensation and giving a receipt in full, unless given in ignorance of its purport or under circumstances constituting a duress, is an acquittance in bar of any further demand. *De Arnaud* v. *United States*, 151 U. S. 483. So the plaintiff seeks to avoid the accord and satisfaction by claiming duress, and that is an issue which it seeks to try in the District Court under Section 10 of the Lever Act.

The alleged facts constituting the duress are that plaintiff was told that the document which it was asked to sign was an order; that, if it was not obeyed, certain payments then due and to become due would not be paid; that its coal and mines would be confiscated, although there was no claim by the officers making the threats that the President would find it necessary, to secure an adequate supply of necessaries for the Army or for the maintenance of the Navy, or for any other public use connected with the common defense, to take over the mines or confiscate the coal, and although the fact was, to the

full knowledge of the President and of the officers, that there was an abundant supply, or source of supply, for all of said purposes.

In avoidance of the receipt in full which it gave, the plaintiff therefore seeks to obtain the verdict of a jury upon the good faith of the President of the United States and of the officers acting under his authority. To hold that Section 10 of the Lever Act conferred general jurisdiction upon the District Courts to try with a jury cases involving such issues as these is not to be believed. It is not merely an action for just compensation. It seeks to set aside an accord and satisfaction on the ground of duress.

(b) **After a property owner has elected to take, and has received, the award of the President, no cause of action cognizable in the District Courts remains.**

The language of the Act conveys no suggestion that any cause of action was left open to the property owner after he had received and accepted the President's award. As already pointed out, the jurisdiction conferred by Section 10 was special and distinct from that of the Court of Claims and was given for the purpose of allowing to the property owner the right of trial by jury. It was not intended to confer a general jurisdiction upon the district courts to hear all cases upon contract against the United States and obviously did not contemplate that the property owner might receive the full amount of the President's award and at the same time preserve his controversy and bring it into court. It was only in

extinguishment of the claim that payment of the full award was authorized, and it was only in full satisfaction of the demand that such payment could be received. The jurisdiction was limited to the cases in which the property owner had elected to accept the 75 per cent and sue for the balance, and it was only by exercising that election that he had a right to invoke that jurisdiction. Having an election to take all in full, or three-quarters on account, he could not take all, even though he protested that it was only on account, and claim the privilege accorded him by the statute.

It is not necessary to decide trivial questions, such as the effect of the payment of 74 per cent or 76 per cent to a plaintiff who had elected to take 75 per cent of the amount found by the President to be proper, or the effect of no payment whatever. The Court of Claims has general jurisdiction to hear and determine claims against the United States arising under the Constitution or Acts of Congress, where private property has been taken by the United States. Neither is it necessary to determine whether, under any view of the case, the plaintiff might have a cause of action against the United States.

The Government has consented to be sued in the District Court by those who, being dissatisfied, have accepted three-fourths of the award, but it is impossible to find assent to be sued by those who have accepted the award in full and merely desire to review a determination of which they have had full advantage. When the President's award has been accepted, so far as the jurisdiction of the district court is

concerned, it becomes a case of accord and satisfaction. As the court below said:

> The President's authority to fix just compensation became conclusive upon the plaintiff when it accepted the amount fixed, and no justiciable controversy was left open to be brought here under the Act.

This construction does not deny to plaintiff any right to have his just compensation ascertained by a judicial process. No particular method for obtaining just compensation is necessary so long as it is conducted in some fair and just manner with opportunity for the owner to present evidence and be heard. *Bauman* v. *Ross*, 167 U. S. 548; *United States* v. *Jones*, 109 U. S. 513. It was quite competent for Congress to invest in the President the power of determining in the first instance what just compensation should be. Indeed t was greatly to the benefit of the property owner, for if the amount fixed was satisfactory it secured to him his money speedily and without the expense or uncertainty of litigation. If, however, the amount fixed by the President was unsatisfactory, there was no injustice in paying him but 75 per cent of that amount, for the hazard of a trial might result in a determination that the award of the President had been too large. At any rate Congress had a right to fix the procedure and prescribe the jurisdiction of the courts in which the United States consented to be sued.

II.

THE FACTS CONSTITUTING THE ALLEGED DURESS ARE UNAVAILING.

The plaintiff does not claim that it was coerced into accepting the amount of the President's award. On page 25 of its brief it is said:

> While we do not insist that the acceptance *of the money* by the Houston Coal Company was compelled by the duress of the Navy officers, what we do contend is that the acquittance of the United States and the agreement to extinguish the claim against the United States, which the court below (R. 5) deduces from the facts stated in the petition and from Section 10, even if the court's deduction is correct, are void and of no effect.

The election which the plaintiff alleges it was compelled to make by threats was the election necessary to be made under the statute, and if the threats were actually made, as we suppose must be taken for granted upon the motion to dismiss, they put upon plaintiff no greater hardship than did the law. It is not alleged that the plaintiff was required to elect to take the President's award, or that in making its choice it was influenced by threats one way or the other. It was merely forced to choose. As the court below said:

> For anything shown by the petition, the plaintiff's election to accept the award in full, rather than seventy-five per cent and obtain the right to sue, was uncontrolled, free and voluntary.

What the plaintiff objected to doing was making the election required by the Act of Congress. It wished to receive the entire amount of the President's award and at the same time preserve its cause of action against the United States. It wished to play fast and loose with the Government, and, in framing its petition, seems to have proceeded upon the theory that all that is necessary to do to confer jurisdiction upon a United States court is to assert the claim that some duress has been practiced by officers of the Navy.

We submit, however, that there is no known legal principle which holds or suggests that a man is deprived of his freedom of conduct and acts under compulsion when he is required to make an election which the law says he shall make. If the Government officers actually required him to make his election in writing, the chances are that the reason for it was because they discerned in plaintiff's attitude an unwillingness to be candid and frank in dealing with it. But, however this may be, they did not require the appellant to do more than signify an election. They required only that which it was his duty in dealing with the Government to do, and no one can be said to act under duress when he is required merely to do his duty. In no aspect do the threats relied upon constitute duress. Threatened withholding of payment is not duress. *Silliman* v. *United States*, 101 U. S. 465. The threatened confiscation and taking over of the mines were steps that the President had a right to take.

The plaintiff does not state that it has rescinded the election which it made, or tendered back to the Government the additional 25 per cent. Contracts made under duress are not void, but voidable. They are valid until rescinded. Rescission must be made within a reasonable time after the duress is removed and must be accompanied by the return of that which was acquired under the enforced contract. 9 Ruling Case Law, page 725.

The claim is made that the plaintiff should not be required to tender the excess, under the familiar rule that one need not tender back that to which the other admits he is entitled, but, under the Lever Act, the President's award determines the compensation only for purposes of settlement. The award, if accepted, binds both parties; if rejected, it binds neither. If the claimant is not willing to accept it and sues for more, he must risk getting less. It can not be said, therefore, that it is admitted, as a matter of law, that plaintiff, after it had elected the partial settlement, would nevertheless have been entitled in any event to the full award. Hence the necessity of rescinding and tendering back the 25 per cent in order to undo such a settlement, if made under duress.

In the case of *Silliman* v. *United States*, 101 U. S. 465, which was an appeal from the Court of Claims, the claimants had executed a new contract to the Government in place of an old one, on the Government's refusing to carry out the old one, and it was alleged that the Quartermaster's Department of the Army demanded the execution of the new contract

containing stipulations essentially different from the old, and announced its purpose to retain possession of the claimant's bridges and withhold all compensation unless and until the claimants executed the same. They signed the new agreement under protest and under pressure of financial necessity and thereafter sued for the compensation originally stipulated. This Court held that the facts stated were insufficient to prove duress. Mr. Justice Harlan, delivering the opinion of the Court, said:

> Instead, however, of seeking the aid of the law, claimants, with a full knowledge of their legal rights, executed new charter parties and, from time to time, received payments according to the rates prescribed therein; protesting, when the new agreements were signed, that they were executed against their wishes and under the pressure of financial necessity. They now seek the aid of the law to enforce their rights under the original charter parties, upon the ground that those last signed were executed under such circumstances as amounted, in law, to duress. Duress of, or in, what? Not of their persons, for there is no pretense that a refusal, on their part, to accede to the illegal demand of the Quartermaster's Department would have endangered their liberty or their personal security. There was no threat of injury to their persons or to their property, to avoid which it became necessary to execute new charter parties executed for the purpose, or as a means of obtaining possession of their property. They yielded to the threat or demand of the depart-

> ment solely because they required, or supposed they required, money for the conduct of their business or to meet their pecuniary obligations to others. Their duty, if they expected to rely upon the law for protection, was to disregard the threat of the department, and apply to the courts for redress against its repudiation of a valid contract.
>
> We are aware of no authority in the text books or in the adjudged cases to justify us in holding that the last charter parties were executed under duress. There is present no element of duress, in the legal acceptation of that word. The hardships of particular cases should not induce the courts to disregard the long settled rules of law.

On page 20 of the brief submitted on behalf of the Atlantic Refining Company and others *amici curiae*, the question is asked at page 20:

> On what may the citizen rely for the sure protection of the substance of the right to just compensation guaranteed by the Constitution and recognized by Congress? On the pledge of the "public good faith"—the the Honor of the Republic.

There is nothing in the position or claim of the plaintiff in this case which entitles it to any sympathy, nor is there anything in the attitude of the Government which calls for any heated rhetoric or impugning of the public good faith. The difficulty in which the plaintiff finds itself is due solely to its own perversity in attempting to play fast and loose with the Government. It failed to observe the injunction of this court "that men must turn square corners

when they deal with the Government." *Rock Island, etc., Ry. Co.* v. *United States,* 254 U. S. 141. The plaintiff's right to just compensation was amply protected by the Act of Congress. It could have elected to take 75 per cent of the President's offer, and does not claim that it did not have freedom of choice to make that election, if it had been so minded. Had it done so, it could have brought its action, and if, as a matter of fact, the President's award was not adequate, it would have had no difficulty in submitting the issue to a jury, and having it decided long ago, as was done in the *Seaboard Air Line* and *Benedict Cases,* decided by this court March 5, 1923. Instead of taking that straightforward and simple course, however, its apparent object was to cajole the Navy Department into paying the entire amount of the President's award by signing the usual voucher in such cases and, at the same time, preserve its right to action against the United States and submit its case to a local jury before which it could pose as a victim of governmental coercion, duress, compulsion, and bad faith.

If it has any cause of action involving these issues, it must litigate it somewhere else than in the District Court under the limited jurisdiction conferred by Section 10 of the Lever Act.

The judgment of the court below should be affirmed.

JAMES M. BECK,
Solicitor General.

ALFRED A. WHEAT,
Special Assistant to the Attorney General.

APRIL, 1923.

○

IN THE

Supreme Court of the United States.

October Term, 1922. No. 365.

HOUSTON COAL COMPANY,
Plaintiff-in-Error,

v.

THE UNITED STATES OF AMERICA.

BRIEF ON BEHALF OF THE ATLANTIC REFINING COMPANY, THE NEW RIVER COLLIERIES COMPANY, AND THE FULTON COMPANY, AMICI CURIÆ.

STATEMENT OF QUESTION INVOLVED.

Where an Act of Congress provides that a citizen whose property has been commandeered shall be paid 75% of value fixed by the Government and shall have the right to sue to recover the balance of just compensation, is the jurisdiction of the Court ousted by the payment of more than 75%, not paid or received in full settlement, the citizen expressly reserving the right to sue for balance of just compensation claimed; *viz.*, market value?

STATEMENT.

Plaintiff-in-error sued to recover balance of *just compensation* for coal commandeered, admitting the receipt of certain payments on account, but alleging that in accepting said payments plaintiff-in-error "*reserved all rights which it might have to collect the full amount of what was just compensation over and above said sum . . .*" (Transcript, pp. 8, 9).

The amounts received were 100% of the values fixed by the Secretary of the Navy acting for the President of the United States under the authority of the so-called Lever Act of August 10, 1917. The lower Court held that its jurisdiction was ousted by plaintiff's having received more than 75% of the tentative prices fixed for the President.

ARGUMENT.

We contend

I. The plaintiff-in-error having "saved the question of the price" necessarily retained its right to sue for balance of just compensation. And it cannot be presumed that Congress intended to oust the jurisdiction of the courts in respect of such plain Constitutional right.

II. The basic jurisdictional facts are the commandeering and the non-payment to the citizen of the full just compensation secured by the Constitution and by the act.

III. The provision of the Lever Act relative to the payment of 75% is not jurisdictional.

IV. So far as concerns the rights of citizens and the jurisdiction of the Court, the 75% provisions of the act were directory, not mandatory.

V. Even if the 75% provision were mandatory so far as concerns the Government officials, it is not so as regards the citizen's rights and the jurisdiction of courts.

I. THE PLAINTIFF-IN-ERROR HAVING "SAVED THE QUESTION OF THE PRICE" NECESSARILY RETAINED ITS RIGHT TO SUE FOR BALANCE OF JUST COMPENSATION. AND IT CANNOT BE PRESUMED THAT CONGRESS INTENDED TO OUST THE JURISDICTION OF THE COURTS IN RESPECT OF SUCH PLAIN CONSTITUTIONAL RIGHT.

In

American Smelting Company v. U. S., 259 U. S. 75, 78 (1922), Mr. Justice Holmes said,

> "But if it had desired to stand upon its legal rights *it should have saved the question of the price.*"

This is exactly what the claimant did do in the case now at bar. It reserved

> "*all rights which it might have to collect the full amount of what was just compensation . . .*"
> (Transcript, pp. 8, 9.)

It is, of course, hornbook law that to constitute an accord and satisfaction, the money must not only be paid but must likewise be accepted with the intent of both the creditor and debtor that it is in full satisfaction of the outstanding indebtedness:

> "To constitute a valid accord and satisfaction, it is also essential that what is given or agreed to be performed, shall be offered as a satisfaction and extinction of the original demand; that the debtor shall intend it as a satisfaction of such obligation, and that such intention shall be made known to the creditor in some unmistakable manner. It is especially essential that the creditor shall have accepted with the intention that it should operate as a satisfaction. Both the giving and the acceptance of satisfaction are essential elements, and if they be lacking, there can be no

accord and satisfaction. The intention of the parties, which is of course controlling, must be determined from all the circumstances attending the transaction."

1 C. J., p. 529, Sec. 16;
McKeen v. Morse, 49 Fed. 253 (1891);
First Nat'l Bank v. Leech, 94 Fed. 310 (1889).

Of course the question of jurisdiction is the only one now before the Court, the District Court having ruled flatly that it had no jurisdiction. But, while finding it had no jurisdiction, THE COURT WENT ON TO HOLD THAT THE PLAINTIFF HAD NO CASE ON THE MERITS, MERELY BECAUSE OF THE RECEIPT OF 100% OF THE PRICES FIXED BY THE GOVERNMENT. THIS HOLDING IS A REDUCTIO AD ABSURDUM OF THE POSITION ASSUMED BY THE COURT BELOW. The Court, without any basis found in the act itself, reads the act as if it provided as a penalty that the receipt of the 100%, even though under protest and with full reservation of the right to sue for the balance of real just compensation, extinguished the right of the plaintiff. That is to say, that contrary to the intention of the parties, Congress intended to create a *statutory accord and satisfaction.* Now Congress might have provided by express words or necessary implication that the citizen should *not* receive 100% of the amount which the Government admitted to be due, except in full payment, settlement, satisfaction and discharge of the citizen's entire claim for just compensation, no matter how much "just compensation" might be in excess of the payment so made. But such a provision would have been so extraordinary and unusual, not to say fantastic and bizarre, and would have been in so ruthless a disregard of a fundamental constitutional right, that such an in-

tent cannot be lightly presumed. The act, in fact, says nothing relative to the 100%, or the consequences of the payment and receipt of 100%. Therefore, that phase of the matter is left precisely as it was under the general law relative to such matters. And the general law is, in accordance with primary principles of justice, that the payment of a smaller sum will not extinguish a right to a larger.

San Juan v. St. Johns Gas Co., 195 U. S. 510 (1903);
Chicago Ry. v. Clerk, 178 U. S., 353 (1899);
Baird v. U. S., 96 U. S., 430 (1877);
Fire Ins. Co. v. Wickham, 141 U. S. 564 (1891).

Unless there is a substantial dispute relative to the liability for the larger amount and *the amount is received in compromise and full satisfaction.* These elements, namely, that the money must be both paid and received in full satisfaction, are of the essence.

The true situation, therefore, is that the citizen may safely receive a further payment on account *unless it agreed that such payment should be in accord and satisfaction.* Here the contrary appears. The plaintiff dissented and reserved its rights. Hence the right to sue for the balance of just compensation was not extinguished.

So far as appears there was no dispute that the market values claimed by plaintiff were in fact market values, and hence the only true and real basis for "just compensation." The amounts paid by the Navy were about $4 per ton, whereas the market prices averred varied from $8 to $21 per ton. It is evident that the Navy had a theory all its own of value of "just compensation." But the plaintiff's theory being the true one, plaintiff on proof of commandeering

and of undisputed market value would be entitled to a directed verdict, together with "damages for detention." So that while in a sense plaintiff's claim was unliquidated, the measure of its right was so clear-cut and readily ascertainable as to be indisputable. And this plain right the Navy attempted to ignore.

The conflict, as in the New River Collieries Company case, argued before this Court on March 8th, 1923, and in the case of The Atlantic Refining Company v. United States, now pending in the Court of Claims, is between the true measure of just compensation, namely, market value, and the Navy's theory of "cost plus a reasonable profit." There is no evidence that the plaintiff ever acquiesced in the latter theory or measure. On the contrary, its assertion has been throughout that the true measure of just compensation was market value and that it was entitled thereto. If the plaintiff is correct in this view of the law, the resultant enormous hardship to it in the assertion of a clear constitutional right finds no countenance whatsoever in the words of Congress.

Plaintiff expressly reserved its rights and having "saved the question of the price" stands upon solid ground on the merits.

AND IF THE RIGHT TO RECOVER THE BALANCE OF JUST COMPENSATION WAS NOT EXTINGUISHED IT WOULD SEEM CLEAR THAT THERE COULD HAVE BEEN NO CONGRESSIONAL INTENT TO PRECLUDE THE RIGHT TO SUE THEREFOR. THE GENERAL PURPOSE OF THE ACT WAS TO PROTECT THE CITIZEN IN THE RIGHT TO JUST COMPENSATION. THERE IS NO EVIDENCE OF AN INTENT TO IMPALE THE CITIZEN ON THE SHARP HORNS OF A DILEMMA.

II. THE BASIC JURISDICTIONAL FACTS ARE THE COMMANDEERING AND THE NON-PAYMENT TO THE CITIZEN OF THE FULL JUST COMPENSATION SECURED BY THE CONSTITUTION AND BY THE ACT.

In effect the Government contends that Congress said to the President:

> "You may not pay more than 75 per cent., even though you may regard it as common justice to the citizen to pay 90 per cent. or 100 per cent., or even though you may regard it as desirable to save the Government damages by way of detention; such payments are unauthorized; such payments will oust the jurisdiction of the Court."

In effect the Government represents Congress as having said to citizens whose goods were commandeered:

> "It is true you have a Constitutional right to recover just compensation and that the measure of just compensation is for the Courts. But we will provide a system under which you must elect at your peril not to take more than 75 per cent. of amounts fixed as just compensation, not by the Courts but by the executive branch of the Government, which we know has no power to fix finally the measure of just compensation.
>
> "In authorizing you to sue for the excess, or the difference between the percentage paid and what would be judicially declared to be just compensation, we mean to impale you on the sharp horns of a dilemma. You must see to it at your peril that you do not take more than 75 per cent. of the amount fixed. If you do, you may not sue at all. You must wait until the just compensation is fixed, though the delay may be a year and a half or more.
>
> "Any payment made either before or after such final determination which turns out to be in excess of the statutory percentage will defeat the jurisdiction of the Court."

May not the Government save accruing charges by way of interest or "damages for detention" by paying in excess of 75 per cent. and if the Government elects so to do, may not the citizen accept it on account without losing his right of action?

The right to sue for commandeered material existed previously to the passage of the acts in question and was a general right based upon the Constitution and recognized by the Tucker Act. The act relied on by the Government in substance directs that a certain percentage should be paid and that the citizen should have the right to sue for the balance of just compensation. It would have been unjust and unreasonable, and perhaps unconstitutional, but Congress *might* have said that *no* payment should be made except upon suit brought. Congress might have said in unmistakable terms, or by necessary implication, that the fixing of the price by the President and the payment of a percentage thereof in exact amount, should be the condition precedent to the bringing of suit. But Congress did not say this in so many words, and unless it is the necessary implication from the language used the Congressional intent should not be so construed. For the conclusion involves both absurdity and unnecessary hardship.

In effect the Government represents Congress as having said that it is not only the duty of the President to fix prices and to see that 75 per cent. thereof is paid, *but that*, notwithstanding general appropriation acts and available funds for the purpose of acquiring materials, or paying for materials acquired, *the President has no authority to pay more than 75 per cent.;* and if he does, the entire fabric of plaintiff's rights is destroyed.

We contend that the administrative department of the United States had general power to make the payments made in this case, without attaching thereto the consequence claimed and without a conclusive and irrebuttable inference arising either that the plaintiff-in-error was paid in full or that the jurisdiction of the Court was ousted.

The citizens' goods are commandeered.

He becomes entitled to just compensation.

That means market price—real value. What he can get for it.

Mistakenly, the Navy suggests another basis unknown to the law.

He declines to acquiesce.

He receives the payment merely on account.

He reserves his right to sue for balance of "just compensation."

He comes into a court admittedly having general jurisdiction of the subject-matter.

U. S. v. Pfitsch, 256 U. S. 547.

He has a valid claim to a balance of just compensation.

He is told by his own Government .

Which has compulsorily taken his property

That he has forfeited his right to sue

Because he has received more than 75 per cent.

Of an amount fixed by Executive authority

In complete disregard of his rights and over his protest.

If a citizen were to so contend

As against another citizen

It would be thought rankly dishonest.

Why should governments set such an example

In the face of "the pledge . . . of the public good faith . . ."

Crozier v. Krupp, 224 U. S. 306 (1912).

When there are present the essential elements of jurisdiction, *viz.*, the commandeering and non-payment of the balance of just compensation therefor.

And we have the plain general intent of Congress to confer jurisdiction of suits to recover balance of just compensation?

III. THE PROVISION OF THE LEVER ACT RELATIVE TO THE PAYMENT OF 75% IS NOT JURISDICTIONAL.

While the amount received by plaintiff-in-error was 100% of the tentative price fixed by the Government, it would seem that the same principle should apply whether the amount received was 76% or 99% or 100%.

Is the provision of the Lever Act relative to the payment of 75% a jurisdictional provision?

IF AN EXACT COMPLIANCE WITH THE 75% PROVISION IS JURISDICTIONAL, THEN THERE CAN BE NO SUIT UNTIL THE EXACT 75% IS PAID, AND NO SUIT IF ANY AMOUNT IN EXCESS OF THE 75% IS PAID.

In

United States v. McGrane, 270 Fed. 761 (1921);

New River Collieries Co. v. U. S., 276 Fed. 690 (1921);

Seaboard Air Line Railway Company v. U. S., Supreme Court of the U. S., October Term, 1922, No. 407, decided on March 5, 1923, in an opinion by Butler, J.,

the plaintiffs had in fact been paid nothing on account, but recovery was allowed, although the plaintiff had not received *anything* on account of the 75%. If it is jurisdictional that the plaintiff shall not have received 100%, then why is it not equally jurisdictional that the plaintiff shall have received 75%? And if the 75% is jurisdictional and it is not paid, how is the plaintiff ever to proceed? Can the Government by failing to comply with this provision of the act oust the jurisdiction of the Court?

And if the provision of the act that the Government shall pay 75% is regarded as a mandatory provision that the Government *shall not pay more than* 75%, can the Government by violating a mandatory provision oust the jurisdiction of the Courts and preclude a constitutional right?

If the 75% provision is jurisdictional, then the citizen could not sue unless 75% in full was paid; and it may be doubted whether the citizen has any remedy to compel the payment of the 75%.

If the 75% is jurisdictional, then the inadvertent payment or receipt of a small sum in excess of the 75% would oust the jurisdiction if the Court. For reading the act strictly as the Court below read it, the payment of the exact 75% is a condition precedent to the right to sue. And the citizen would in some instances be remediless.

The Governmental construction of the 75% provision as directory, by paying more than 75%, and by raising no objection though *nothing* had been paid, would be persuasive in case of doubt.

The provision is directory merely and the Government by its actions showed their construction of it as directory, a construction which is persuasive in case of doubt:

U. S. v. Cerecedo Hermanos y Compania, 209 U. S. 337 (1908);

Robertson v. Downing, 127 U. S. 607 (1887);
U. S. v. Healey, 160 U. S. 136 (1895);
U. S. v. Philbrick, 120 U. S. 52 (1886);
National Lead Co. v. U. S., 232 U. S. 140 (1920);
Paul Jones & Co. v. Mayes, 265 Fed. 365 (1920).

IV. So FAR AS CONCERNS THE RIGHTS OF CITIZENS AND THE JURISDICTION OF THE COURT, THE 75% PROVISIONS OF THE ACT WERE DIRECTORY, NOT MANDATORY.

> "The privilege given in the act for a party to sue the United States is not a privilege given to sue the United States in matters in which that privilege never theretofore existed. It is given as a part of the process of condemnation, without which title to the property could not be acquired by the governing body for public purposes. It does not come within the purview and scope of the general class of claims against the United States, resulting under contracts, or for damages for the unauthorized acts of its officers, who may be personally responsible, but for which the United States could not be sued without its consent."
>
> Filbin Corporation v. U. S., 265 Fed., at p. 358 (1920).

That is to say the claim here involved is a claim based primarily upon the Fifth Amendment of the Constitution of the United States, and the plaintiff's right to have and to sue for just compensation for its property taken by the Government for public use, cannot be taken away by the Act of Congress.

The provision that the President shall fix just compensation, and that the citizen may have 75 per cent. thereof preliminarily, manifestly has no relation

to the right of action; Congress could not constitutionally give the President final authority to determine just compensation:

> "His determination of the compensation to be made could not, by any valid statute passed by Congress, be made conclusive."
>
> Filbin Corporation v. U. S., 265 Fed., at p. 357 (1920).

If the Government officials, presumably acting under direct authority from the President, in order to save damages for delay (the legal rate of interest being usually in excess of that at which the Government can borrow) chose to pay more than 75% (of "cost" plus a reasonable profit—see New River Collieries Company v. United States), the transaction is neither wrong nor improper, but a sensible business transaction for the benefit of the Government and for the protection of the business interests of the country.

Congress will not be presumed to have intended an absurd result.

A mandatory construction, such as now contended for by the Government as ousting the jurisdiction of the Courts results in practical absurdities; and Congress will not be presumed to have intended an absurd result.

United States v. Hogg, 112 Fed., 909 (1902);

Interstate Drainage Co. v. Bd. of Comms., 158 Fed. 270 (1907);

Lau Ow Bew v. United States, 144 U. S. 59 (1891);

Holy Trinity Church v. U. S., 143 U. S. 457 (461), (1891).

The Government's construction of the act not alone raises a serious question of its constitutionality, but does violence to the letter and spirit of the statute. The statute reads:

> "If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid 75 per cent. of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation. . . ."

The connection between the 75 per cent. clause and the clause giving jurisdiction is not such as to make the latter conditional upon the former.

And the spirit and apparent purpose of the act indicate that the 75% provision is collateral to the right to sue and in no sense a condition upon which consent to sue is given.

> "The provision that he (the President) should determine in the first instance so as to pay 75 per cent. of the amount determined by him was a provision in favor of the owner of the property so as not to keep him out of all compensation pending the litigation to which he is entitled by the Constitution to determine what was just compensation."
>
> Filbin Corporation v. U. S., 265 Fed., at p. 357.

The Government errs in its contention that every directory provision in an Act of Congress conferring a right of action against the United States, is in the nature of a condition or term upon which consent to sue is given. Compare, for example, the Tucker Act passed by Congress on March 3, 1887, conferring jurisdiction in cases of claims against the United States

arising under the Constitution of the United States, upon contracts, express or implied, etc. Section 5 thereof provides in effect that any suit under Section 2 should be brought "in the district where the plaintiff resides." Yet, it was held that this provision requiring plaintiff to bring suit against the United States in the district in which plaintiff resides

> "is a personal privilege which the law officers of the Government may waive and in this case did waive by putting in a general appearance."
>
> Per U. S. Cir. Ct. of App., Second Circuit, in U. S. v. N. Y. &c. Co., 216 Fed. 61 (1914); (Appeal dismissed, 238 U. S. 646).

V. Even if the 75% provision were mandatory so far as concerns the Government officials, it is not so as regards the citizens' rights and the jurisdiction of courts.

The act provides a method of dealing with the citizen whose goods are commandeered. The subject-matter is not contractual. The relation contemplated is involuntary so far as concerns the citizen. The act authorizes the commandeering. The act directs payments. In general, the act authorizes suit to recover just compensation, or balance thereof.

Bearing steadily in view that the right in question is a constitutional right secured to the citizen by the Fifth Amendment and that Congress presumably intended to secure to the citizen the full compliance by the Government with the duty of the Government to make whole the citizen for his goods commandeered, what was the intent of Congress as shown in the words of the act?

The power given to the President to fix prices was necessarily a right to fix tentative prices. The

President did not affect to fix prices which would be finally binding on the citizens. The parties to the transaction were not dealing on a basis of equality. No matter how wrong or perverse the theory on which the Government attempted to fix prices and how contrary to settled principles of constitutional law, the citizen could only receive the amount which the Government deigned to give. In other cases in the courts, the prices were attempted to be fixed on a theory wholly contrary to law and in violation of the constitutional rights of the citizen.

Not only did the Government refuse to follow plain and well-settled precepts of constitutional law so far as the measure of damages was concerned, but it saw fit to pay more than 75% of the amount determined to be due by the new measure of compensation set up. Now the act provides for three things—(a) compensation shall be fixed; (b) if it is unsatisfactory the citizen shall receive 75%; and (c) he "shall be entitled to sue the United States to recover such further sum as added to said 75% will make up such amount as will be just compensation . . ." The act does not say what shall happen in case the price fixed is satisfactory. But the result there is automatic; the price is paid and received in full and there is an end to the matter. Nor does the act say what shall happen in the event that the Government desires to pay 100% of the tentative prices and the citizen receives same, reserving his rights.

What did Congress intend under the facts of the case at bar? Did Congress intend to provide two alternatives, each equally non-resilient and each equally Procrustean: 100% and quit, or 75% and sue? Did Congress mean to say, you may not receive more than 75%, except under penalty of ousting the jurisdiction of the Court and extinguishing your claim?

"Shall be paid 75%" is a direction to the Government. But there is no prohibition against paying more than 75%. Congress can scarcely be deemed to have had in mind a case like this in which a citizen's property is attempted to be commandeered at 50%, 25%, 20% of market prices. The Navy must have realized how extreme its position was, and how great the hardship to the citizen. It knew there was a strong likelihood of the Government's being let in for "damages for detention" to the extent of millions upon millions. Hence the Government's willingness to pay 100% of a wholly unjust and inadequate "compensation." The Government might have insisted upon the 100% being accepted in full, and have withheld payment unless it was so received. Then the principle of

American Smelting Co. v. U. S., 259 U. S. 78,

might apply—though that was held to be a case of contract, and here commandeering and commandeering only is averred. But the Government did not insist on an accord and satisfaction in fact, but, on the contrary, paid the money and evidently kept on paying the money in the face of plaintiff's repeated insistence upon reserving its rights to sue for balance of just compensation. The argument must proceed on the footing that, aside from intent, or even aside from express agreement, and in defiance of the usual principles of law, the receipt of more than 75% *ex propria vigore* and by virtue of the act itself necessarily ousts the jurisdiction of the Court.

Viewed from the standpoint of the Government official, he might well say, Congress has limited my authority to pay 75%; it is not for me to say that this is not

"a reasonably just and prompt ascertainment and payment of the compensation."

Crozier v. Krupp, 224 U. S., p. 306 (1912).

But viewed from the standpoint of the citizen, whose property is taken without his consent, and valued, over his objection, at half or less of its real value in the market, the citizen who has a right to feel that his rights are being ridden over rough-shod by ignoring the well-known and universally-acquiesced-in measure of value; the citizen who has a right to rely on a *Constitutional* guaranty that he will be made whole, and knows that Constitutional guaranty has always been held to mean market value; the citizen may well presume that Congress, when it used the very words of the Constitution, meant to confirm and protect him in the full substance of his Constitutional right, and that the main purpose and intent of the act was to confer jurisdiction to recover the balance of that just compensation meant by the Constitution, less any payment made on account thereof.

Oust the jurisdiction of the Courts? Yes, just to the extent to which the claim for just compensation is extinguished and no whit further. If 75% had been paid, the difference between that and just compensation may be recovered; if 100%, the difference between that and just compensation may be recovered; in either case it will be *the balance of just compensation;* in either case it will be

"such further sum as . . . will make up such amount as will be just compensation . . ."

The words "added to said seventy-five per centum" are descriptive and were inserted on the assumption that payments would be limited to 75%; but the substance of the jurisdiction conferred and of the right of recovery alike is "such further sum as . . .

will make up such amount as will be just compensation . . ." And this Court unhesitatingly held, in the face of an act expressly forbidding the payment of "interest," that the Constitutional duty to make the citizen whole as of the taking rose supreme:

> Seaboard Air Line v. U. S. (decided March 5th, 1923, in an opinion by Mr. Justice Butler).

Here, as there, the citizen may rely on the mandate of the Constitution; there is not even a far-fetched inference that Congress did not intend fully to comply with that mandate.

On what may the citizen rely for the sure protection of the substance of the right to just compensation guaranteed by the Constitution and recognized by Congress? On the pledge of the "public good faith"—the Honor of the Republic.

IRA JEWELL WILLIAMS,
For the Atlantic Refining Company, The New River Collieries Company, and The Fulton Company, Amici Curiæ.

HENRY HUDSON,
F. R. FORAKER,
FRANCIS SHUNK BROWN,
JOHN H. STONE,
Of Counsel.

No. 365

Supreme Court of the United States

OCTOBER TERM, 1922.

HOUSTON COAL COMPANY, a Corporation
Under the Laws of West Virginia,
Plaintiff in Error,

vs

THE UNITED STATES OF AMERICA,
Defendant in Error.

Reply Brief for Plaintiff in Error.

A. JULIUS FREIBERG,
W. A. GEOGHEGAN,
Attorneys for Plaintiff in Error.

COURT INDEX PRESS, 650 Main Street, Cincinnati, Ohio, April, 1923.

Supreme Court of the United States

October Term 1922

HOUSTON COAL COMPANY,
Plaintiff in Error,

No. 365. *vs.*

UNITED STATES OF AMERICA,
Defendant in Error.

Reply Brief for Houston Coal Company, Plaintiff in Error.

Counsel for the Government (Brief, 2) has not stated the case fairly. He says: "The specific question is whether the District Court has jurisdiction to entertain an action against the United States under Section 10 of the Lever Act to recover just compensation for property requisitioned, after the property owner *has accepted* the full amount determined by the President to be just compensation for his property."

If the plaintiff had accepted the full amount and given

voluntary acquittance there would of course be no ca
That plaintiff did *not* accept and acquit the Governme
is the very pith and substance of the plaintiff's petitio

This plaintiff deeply resents the charge of counsel f
the Government in its brief that the plaintiff "wished
play fast and loose with the Government" (Brief, pa
16); or that it is attempting to enlist the sympathy
the court (Brief, page 19) or that it has failed to
serve the injunction of this court, "that men must tu
square corners when they deal with the Government
(Brief, page 19); or that "the situation in which t
plaintiff now finds itself is the result of its attempt
serve its own interests in deliberate disregard of a pla
Act of Congress" (Brief, page 7).

The plaintiff's petition (R., 8) and the amendment
its petition (R., 53) amply disclose that the shoe is e
tirely on the other foot.

This plaintiff was a general dealer, a law-abiding pr
ducer of coal. Plaintiff in the controversy at bar w
not dealing with an individual in private contract. I
product was being taken by the Navy at an enforced pri
of one-half of what it could easily have obtained fro
individuals in the market. Plaintiff was willing to su
render its coal to the Government, even though the wa
had long ago terminated; but certain officers of the Nav
seemed to be determined, by hook or crook, to obtain i
coal at cut-throat prices.

Suits by other coal producers, one of them late
argued in this court (*New River Collieries Co.* v. *T*

United States, No. 316), show the situation in which the coal producers found themselves—a situation not at all creditable to the officers of the Navy. This plaintiff is seeking justice, not sympathy.

Plaintiff also takes this occasion to resent the criticism of the form of its pleadings (Brief, page 10). The criticism is that "plaintiff's petition, as finally perfected by amendment, indicates great reluctance to set forth the facts in a plain, simple manner." Plaintiff's original petition, as we think, sufficiently set forth the cause of action. It was only due to the suggestion of the court below, and in order to conform with its opinion, with which however this plaintiff did not agree, that the amendments were made. The pleader did not feel called upon to plead evidence.

Furthermore, plaintiff desires to deny the imputation of counsel (Brief, page 12) that the plaintiff "imputed bad faith to the President of the United States." We do not need to advise this court that personally, the President of the United States knew nothing about these transactions; they were the work of certain Supply Officers in the Navy Department.

ARGUMENT.

The argument of counsel for the Government, is an attempt to confuse the question of the jurisdiction of the court with the merits of the case, that is to say, the question as to whether or not there was an accord and satisfaction. We contended in our main brief that the plaint-

iff was entitled to a consideration and decision as to all of the facts alleged in the petition by the trial court and the jury. Of course, if plaintiff's petition disclosed questions of law that could be decided by the court in advance of the trial, then this plaintiff was entitled to a decision as to the validity of the cause of action. It goes without saying that if this court desires to pass upon the validity of the petition coincidentally with the jurisdiction of the court below, it will take that course. But the reasoning of counsel as to the jurisdiction of the court should, we think, be kept clear and apart from the reasoning as to the validity of the cause of action in general.

We have contended that Section 10 of the Lever Act was practically a statute providing for proceedings in the process of condemnation under the Government's power of eminent domain, and that the 75 per cent. clause was not by way of qualifying the jurisdiction of the court, but was a collateral provision for the benefit of the person whose property had been commandeered so that he might not be kept out of all of his money pending the settlement of the controversy.

The right of this plaintiff is based upon the Fifth Amendment to the United States Constitution.

We contend that even had Section 10 of the Lever Act never been passed, plaintiff would have had his redress in the Court of Claims. *United States* v. *Lynah*, 188 U. S., 445; *United States* v. *Berdan Fire Arms Co.*, 156 U. S., 552.

This court has held in *United States* v. *Pfitsch*, 256 U. S., 547, *not* that Section 10 of the Lever Act was designed to cut down the right of the citizen to have his redress in such cases, but that it was intended to give him *greater* rights than he had before; that is to say, a right of trial by jury. In other words, the statutory permission to sue the United States could hardly be said, in view of the latter case, to be shorn of any of its amplitude by this new section.

As we have said before, had the case been in the Court of Claims upon the implied contract with the Government to pay for what it had taken under the old statute or under the Tucker Act, the mere receipt of at least that amount which the President's officers admitted to be just compensation, surely would not have disentitled plaintiff to make his case for the full amount of his loss, if greater than the President's price.

The petition of the plaintiff in this case shows that at the time the President's price was received by the plaintiff, the department was repeatedly notified that the price was not satisfactory, and that if received, it was received under protest and with full reservation of plaintiff's rights to recover more.

The Government had full notice of this protest, and notwithstanding its experience with the plaintiff as set forth in the first cause of action, it continued to take the coal and pay the plaintiff the protest price, with full knowledge of the fact that the plaintiff did not intend the receipt of the money to be in full satisfaction.

If the Government chose to pay 100 per cent. of the President's price under these circumstances, should the plaintiff have refused to receive it? It can hardly be believed that the Government would be expected to be guilty of unfair dealings or that Congress intended to impale the citizen whose property had been taken on the horns of a dilemma.

We contend that the 75 per cent. provision was a collateral provision and merely *directory,* authorizing the Government to pay 75 per cent. pending the solution of the difficulty. It is an unwarranted forcing of a construction of the statute, and a construction that would lead to absurdity, to presume that the citizen could not sue the Government if he had taken one penny more than 75 per cent., *no matter what the circumstances. Filben Corp.* v. *United States,* 265 Fed., 354.

Practically the same provision as to payment of the 75 per cent., or in some cases 50 per cent., is found in other statutes giving jurisdiction to the Court of Claims, notably the Acts of March 4, 1917, United States Compiled Statutes, Compact Edition, Section 3115, 1-16C and of June 15, 1917, United States Compiled Statutes, Compact Edition, Section 3115 1-16D.

In a case brought under these provisions, it appears that the Government itself paid the full 100 per cent. of the President's price, and *entered into a stipulation approved by the Attorney General of the United States with the understanding that the claimant should have the right to proceed for the balance he claimed,* in the Court

of Claims, although the Government now questions the jurisdiction of the Court of Claims in that case. *Atlantic Refining Co.* v. *United States,* 34448 U. S. Court of Claims (R., pages 163-164).

So, it will be seen that the Government itself, in the beginning, did not regard the mere payment of 100 per cent. of the President's price as ousting the jurisdiction of the court, in cases of this kind.

Counsel for the Government brushes aside as trivial (Brief, page 13) the suggestion of the plaintiff as to the effect of the payment of 74 per cent. or 76 per cent. to a claimant, or as to the effect of no payment whatever. If the consideration of the element of voluntary accord and satisfaction is omitted at this point, as we think it should be, and relegated to another place in the argument, the suggestion of slight under-payment or slight over-payment, reducing the construction of the Government to an absurdity, is, it seems to us, highly important and not at all trivial. If the jurisdiction of the court is based absolutely upon the receipt by the claimant of 75 per cent. and the Government claims that the District Court has no jurisdiction unless 75 per cent. and only 75 per cent. has been received, then the power of unfair Government officers to exclude a claimant from his day in court will be so great as to lead to an absurdity not to be entertained.

It must not be overlooked that the Act (Section 10) clearly gives to the President the right to pay and "he shall ascertain and pay a just compensation." This

means the full amount. Section 10 then goes on and, after the 75 per cent. clause, provides for the jurisdiction of the court. The phrase used is in general terms and is as follows:

> "And jurisdiction is hereby conferred on the United States District Court to hear and determine all such controversies."

Note the phrase: "All such controversies." We contend that this controversy is *one* of the controversies contemplated in the section.

(a) The Question of Accord and Satisfaction.

The original petition of plaintiff (R., 1) alleges that the defendant "refused to pay a greater sum than $4 a gross ton for coal over the protest of this plaintiff."

The amended petition (R., 8) recites: "plaintiff says that it duly notified the Secretary of the Navy that the compensation so determined by him for the President was not satisfactory to the plaintiff," and also:

> "The said sum was accepted by way of partial payment under protest, however, plaintiff asserting that it accepted said sum, under duress * * * and that in accepting said sum, it, the plaintiff, protested to the Secretary of the Navy and reserved all rights which it might have to collect the full amount of what was just compensation, over and above said sum of $4 per gross

> ton, and over and above said sum of $8,000, and that said sum of $8,000 was paid to plaintiff, as aforesaid, with full knowledge on the part of said officers of said protest."

This plaintiff will not presume to cite authorities to this court that in order to constitute an accord and satisfaction, the receipt of the money *must be intended by both parties* to be an accord and satisfaction. Therefore, no matter what may have been the other circumstances present, a pleading which sets forth that the money was received under the conditions above stated, surely states a case that entitles the plaintiff to introduce evidence and to have that evidence weighed by a court and jury as to whether, in fact, there was an accord and satisfaction.

Counsel for the Government says (page 11):

> "Receiving money tendered as full compensation and giving a receipt in full * * * is an acquittance in bar of any further demand."

The answer to this suggestion is that the plaintiff, as alleged in its petition, *did not give a receipt in full,* but, on the contrary, protested and reserved all its rights, and moreover, the Government continued to pay him 100 per cent. of the President's price, with full knowledge of his protest.

American Smelting Co. v. *U. S.*, 259 U. S., 75, 78.

(b) The Question of Duress.

It is very easy for counsel for the Government, after all these years, and after the facts have perhaps become dimmed in the minds of the Navy officers, to make sarcastic allusions to the plaintiff's conduct: that it was "unwilling to comply with the terms of the Act and in an endeavor to circumvent the Act and at the same time make out a cause of action against the United States, etc." (Brief, page 10). The fact is, as alleged in the petition, all the troubles plaintiff had with the government were due entirely to the truculence and outrageous acts of certain officers of the Navy who were determined to obtain $4 coal for the Navy when everybody else in the United States, including the other branches of the Government, had to pay $8 a ton for the same coal.

Is it conceivable that the Navy officers, by their own actions, dealing with a citizen who was powerless under their hands can, by such methods, and after forcing one whose property has been taken also by force, foreclose him or it from a remedy by claiming that the statute itself made the receipt of 100 per cent. of the President's price an accord and satisfaction, without any possibility of inquiry by the District Court, or by any other tribunal, as to the circumstances under which the receipt of the money was had?

We do not think that Congress could have intended the mere receipt of the money no matter how induced, to be

a statutory accord and satisfaction, closed against further inquiry. That would have been to deny due process of law.

The Navy officers in the first place could, and did dangle before the bewildered citizen the proposition of "$4 and quit or $3 and sue."

The war was over, although perhaps not technically so. The President had lifted fixed prices on coal. The Navy was willing to pay only $4 and the open market afforded $8 to the operator. The Government owed the claimant large sums of money (R., 54). The Navy officers informed the plaintiff that if the election was not made, these sums would be withheld and that the mines of the plaintiff would be taken. It is submitted that an election, secured by the Navy under these circumstances under the cases cited in the original brief, is not to be taken against the plaintiff.

Counsel for the Government, probably unwittingly, says:

> "It is not alleged that the plaintiff was required to elect to take the President's award or that in making its choice it was influenced by threats one way or the other." (Brief, page 15.)

Counsel has ignored the second paragraph of the amendment to the amended petition (R., 54). The first paragraph of the amendment sets forth the facts of the duress in connection with the election itself. The second paragraph alleges *that the same threats* were made

"touching the acceptance by said plaintiff of said price so fixed by the President as just compensation."

The facts as admitted by the motion discloses the manifest system of the Navy officers. They proposed to commandeer coal instead of purchasing at the market value in the open market, and they were going to purchase at, or near the old price fixed by the President, notwithstanding the fact that the market price had since doubled, and their theory evidently was that the whole controversy could be nicely closed by engineering the coal operators into accepting their prices and thereby dispossessing the coal operator of any further right to sue. Such was doubtless their construction of Section 10 of the Lever Act, and such is the construction of counsel for the Government in the case at bar.

CONCLUSION.

It is submitted that all of these questions of fact are important and that the plaintiff has the right to litigate them and that it has a right to recover before a jury if it can sustain its facts and at least "have a chance for its white alley."

Respectfully submitted,

A. JULIUS FREIBERG,
WM. A. GEOGHEGAN,
Attorneys for Plaintiff in Error.

Addendum.

In a lawsuit brought against the United States by a coal company whose coal had been taken, but who had been paid but 75 per cent. of the President's price (the case of *Blake Coal Co.* v. *United States,* No. 2918 in the Southern District of Ohio, Western Division, tried before Judge Peck, who also decided the case at bar) the Government was attempting to show market value by citing the price paid to the Houston Coal Company and others, that is $4 per gross ton, under the circumstances set forth in plaintiff's petition. The following colloquy occurred between counsel for the government and the court:

Mr. Roudebush: They are voluntary, Your Honor.

The Court: Is it quite voluntary if a man has to accept what is offered him or bring a lawsuit?

Mr. Seasongood: And lose interest—we can't recover interest and attorney fees.

Mr. Roudebush: And attorney fees—we heard that before.

The Court: Do you regard that as voluntary?

Mr. Roudebush: I think so, Your Honor.

The Court: I am inclined to think, and in fact I am prepared to rule that that is not a voluntary transaction within the meaning of that phrase as used in determining market value. We exclude, for instance, a sher-

iff's sale, in an appropriation case, in getting at market value we exclude a sheriff's sale, although there may be competition and everyone has an opportunity to bid, yet we exclude those as forced sales. We exclude purchases made under circumstances of compulsion, as, for instance, we exclude purchases of right of way by a railroad where it is necessary either to purchase it or condemn it. *For the same reason you would exclude an acquiescence in a price fixed by the Navy for coal which it has requisitioned when it states to the supplier "You must either take this price or accept seventy-five per cent. of it and sue us for the balance."* If the account were small, the cost of a lawsuit might be a very substantial element in determining whether it was worth while or not. And therefore, it seems to me quite clear that that is not within the realm of voluntary transactions, as we understand them, in fixing market value. I think the criticism is well taken.

HOUSTON COAL COMPANY *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

No. 365. Argued April 10, 1923.—Decided June 4, 1923.

Section 10 of the Lever Act grants jurisdiction to the District Court of an action against the United States to recover the difference between what the Government has paid the plaintiff as just compensation for property requisitioned under that section, and what the plaintiff, alleging that the payment was accepted under protest, because of duress, and with express reservation of the right to demand more, claims to be just compensation. P. 364.

Reversed.

ERROR to a judgment of the District Court dismissing, for want of jurisdiction, an action under the Lever Act, to recover the difference between what the Government paid the plaintiff, as just compensation in full, for property requisitioned, and a larger amount which, plaintiff alleged, was the true value.

Mr. A. Julius Freiberg and *Mr. Ira Jewell Williams*, with whom *Mr. W. A. Geoghegan* was on the briefs, for plaintiff in error.

Mr. Alfred A. Wheat, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

The jurisdiction conferred upon the District Courts by § 10 of the Lever Act does not extend to suits brought

to recover additional compensation after the property owner has elected to receive, and has received, the amount determined by the President to be just compensation, nor to suits to avoid an accord and satisfaction upon the ground that it was obtained by duress.

Section 10 of the Lever Act provided two methods of payment. First, the President was directed to ascertain the just compensation and pay it. Second, if the owner of the property taken elected not to accept the President's award he was to be paid 75 per cent. thereof and could sue for such additional amount as would make the compensation just, and jurisdiction was conferred upon the District Courts to hear and determine that issue.

The Government claims that such were the only issues which the District Courts were empowered to entertain.

The District Courts have no general jurisdiction of suits against the United States other than that conferred by § 24, Jud. Code, pursuant to which they sit as courts of claims, without a jury, in cases involving claims not exceeding $10,000. Statutes extending the right to sue the Government and conferring jurisdiction upon the courts for that purpose will, as a general rule, be strictly construed, *Blackfeather* v. *United States*, 190 U. S. 368; and the jurisdiction can not be enlarged by implication. *Price* v. *United States*, 174 U. S. 373, 375.

It is only when a controversy within the terms of the Lever Act is stated that the District Court has jurisdiction to entertain it against the United States. If that court might not entertain the case by virtue of that particular act, it might not entertain it at all. That the petition must show a case within the statutory permission to sue the United States or fail for want of jurisdiction is undoubted. *Hill* v. *United States*, 149 U. S. 593; *Haupt* v. *United States*, 254 U. S. 272; *Great Western Serum Co.* v. *United States*, 254 U. S. 240; *United States* v. *Nederlandsch-Amerikaansche Stoomvaart*, 254 U. S. 148.

It would seem to be clear that, from the language of § 10 of the Lever Act, the only issue which Congress contemplated would arise under the act was that of just compensation, and it was willing, indeed, it insisted, that the property owner have the right of trial by jury as to that issue. *United States* v. *Pfitsch*, 256 U. S. 547.

The alleged facts constituting the duress are that plaintiff was told that the document which it was asked to sign was an order; that, if it was not obeyed, certain payments then due and to become due would not be paid; that its coal and mines would be confiscated, although there was no claim by the officers making the threats that the President would find it necessary, to secure an adequate supply of necessaries for the Army or for the maintenance of the Navy, or for any other public use connected with the common defense, to take over the mines or confiscate the coal, and although the fact was, to the full knowledge of the President and of the officers, that there was an abundant supply, or source of supply, for all of said purposes.

In avoidance of the receipt in full which it gave, the plaintiff therefore seeks to obtain the verdict of a jury upon the good faith of the President of the United States and of the officers acting under his authority. To hold that § 10 of the Lever Act conferred general jurisdiction upon the District Courts to try with a jury cases involving such issues as these is not to be believed. It is not merely an action for just compensation. It seeks to set aside an accord and satisfaction on the ground of duress.

After a property owner has elected to take, and has received, the award of the President, no cause of action cognizable in the District Courts remains. The facts constituting the alleged duress are unavailing.

Mr. Ira Jewell Williams, Mr. Henry Hudson, Mr. F. R. Foraker, Mr. John H. Stone and *Mr. Francis Shunk Brown*, by leave of court, filed a brief as *amici curiae*.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

This cause went off below on motion to dismiss the petition and the record presents a question of jurisdiction only. Judicial Code, § 238. Did the District Court have authority to hear and determine the issues tendered by plaintiff in error? The point is not free from difficulty; but, after considering the contending views, we conclude there was jurisdiction and that the judgment to the contrary must be reversed.

Purporting to proceed under authority granted by § 10 [1] of the Lever Act, approved August 10, 1917, c. 53, 40 Stat. 276, the President, acting through the Secretary of the Navy, requisitioned coal belonging to the plaintiff in error and paid therefor four dollars per ton, just compensation as ascertained by him. Alleging that this was received under protest, because of duress, and with express reser-

[1] Sec. 10. That the President is authorized, from time to time, to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessaries or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies: *Provided*, That nothing in this section, or in the section that follows, shall be construed to require any natural person to furnish to the Government any necessaries held by him and reasonably required for consumption or use by himself and dependents, nor shall any person, firm, corporation, or association be required to furnish to the Government any seed necessary for the seeding of land owned, leased, or cultivated by them.

vation of the right to demand more, the Coal Company instituted the original action to recover the difference between the amount received and what it claimed to be just compensation. The court held that § 10 did not grant permission to sue the United States therein to one who has received the amount determined by the President for requisitioned articles; and that it lacked jurisdiction to adjudicate the issues which the petition presented.

The Lever Act was passed in view of the constitutional provision inhibiting the taking of private property for public use without just compensation. It vested the President with extraordinary powers over the property of individuals which might be exercised through an agent at any place within the confines of the Union with many consequent hardships. As heretofore pointed out, *United States* v. *Pfitsch*, 256 U. S. 547, by deliberate purpose the different sections of the act provide varying remedies for owners—some in the district courts and some in the Court of Claims.

It reasonably may be assumed that Congress intended the remedy provided by each section should be adequate fairly to meet the exigencies consequent upon contemplated action thereunder and thus afford complete protection to the rights of owners. Considering this purpose and the attending circumstances, we think § 10 should be so construed as to give the district courts jurisdiction of those controversies which arise directly out of requisitions authorized by that section.

Reversed.